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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,*	*On Indictment for Murder.*
vs.	*On Error to Supreme Court.*
JAMES BAVIER, *et al.*, *Plaintiffs in Error.*	

Brief for Plaintiffs in Error.

Statement of Facts.

This writ of error brings up for review the entire proceedings (p. 1230), at the trial of an indictment for murder, alleged to have been committed on January 19th, 1915, in which the defendants were convicted of manslaughter and sentenced to State's Prison for terms of not less than two nor more than seven years. One of the defendants mentioned in the indictment was acquitted by direction of the Court (p. 1219, l. 21).

On the 4th of January, 1915, a strike commenced at the manufacturing plants of the Liebig Manufacturing Company and Williams & Clark Fertilizer Co., which lasted until about the 25th of the same month (p. 723, ll. 15-17). The two plants are located on the Kill von Kull at Roosevelt, about a mile apart, being owned and controlled by the American Agricultural Chemical Company (p. 723, ll. 1-6), and are under the same management. They cover considerable territory, as appears from the maps in this case, and are reached by several roadways, as well as by a spur of the Central Railroad Company of New Jersey, which runs passenger train service to and past both the plants.

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The defendants are ten of a number of men who early in the history of the strike, owing to the disorder, and danger to property and life of the strikers, had been summoned and sworn in by the Sheriff of the County of Middlesex, and detailed to preserve life and property in and about these plants.

While the strike commenced on the 4th of January, this disorder was sufficient to impell the manager of the plant, Mr. Waring, to appeal to the sheriff for protection (pp. 725, 726, 727).

Defendants were, as hereinafter shown, denied an opportunity to prove what occurred during the preceding two weeks prior to January 19th, to the effect that shortly after the strike had commenced disorder took place at both plants among the crowds of strikers who daily congregated there; that some of the employes were shot at by the strikers; the windows of their plants were broken and the property and lives endangered. It does appear, however, from the testimony of each of the defendants, that they were severally sworn in by the sheriff of Middlesex County, and with their associates were engaged from the 5th to the 19th of the month in protecting the plants and employes from the strikers.

The proofs show that on the morning of January 19, 1915, the strikers gathered to the number of about three hundred in front of the Liebig plant (p. 892, ll. 12-15), for the purpose of stopping the train which was expected to arrive at that point with working men (p. 1098, ll. 32-38). The train being obstructed by the strikers came to a stop (p. 239, l. 39), and the train was permitted to proceed on its way only when the strikers had satisfied themselves that it contained no working men (p. 660, ll. 5-11). The strikers then marched in a body to the Williams & Clark plant, about a mile north, and there joined another band of strikers

numbering some five hundred, making in all a mob of about eight hundred men (p. 420, ll. 25-26). They placed two ties across the track of the railroad and stuck a pole with a red sweater in the ground (p. 524, ll. 12-13) at a point about one hundred and fifty feet from the station, in plain sight of the Williams & Clark factory, and awaited the arrival of the eight o'clock train. The engineer of the train observing the obstruction and the danger signal, stopped his train about one hundred and fifty feet north of the station (p. 246, l. 20). The strikers, who were armed with clubs, sticks, stones and fire-arms (p. 764, ll. 20-25), dashed for and boarded the train, to ascertain whether or not any working men were aboard who might take their place at the Williams & Clark plant (p. 260, ll. 30-35). The place where the train stopped was in plain view of the occupants of the plant, including the defendants.

The defendants were anxious to have the conduct and demeanor of the strikers during the intermediate two weeks described before the jury, so that the latter might be in the atmosphere that surrounded these plants during that time, and in order that the jury might thereby apprehend what, the defendants had a right to suppose, the mob expected to do on the morning of the homicide.

The court would not even permit the defendants to show what had happened on the arrival of the same train on the part of the strikers the day prior to the homicide, notwithstanding (p. 730) they offered to show:

> "That on the day before the occurrences in question a mob of strikers, many of the same who were in front of the Williams & Clark plant on the 19th, and in front of the Liebig plant, belonging to the defendant, the American Agricultural Chemical Company, created some disorder, broke the glass of the buildings, and shot at a man who was supposed to

be, and was, in fact, connected with the Liebig plant."

The defendants were of a group of about forty-five of the sheriff's deputies, who at this juncture emerged from the Williams & Clark plant, some for the purpose of escorting employes arriving from the train, and bound for the works, as had been their custom (pp. 1098, ll. 32-38; 990, l. 38; 1016-1038, l. 30; 1098, l. 30 and 1108). Others of them went out to disperse the crowd and remove the obstruction (pp. 1000, 1018, 1027, 1056, 1060, 1075-1076, 1116-1117, 1123 and 1133). They had not reached the train when several shots were fired from the west side of the track, where the strikers had congregated (p. 781). A volley of missiles, stones and slag was thrown by the strikers at the sheriff's deputies (p. 1074). Several of the deputies, who were armed with riot guns, thereupon fired a volley into the air and over the heads of the strikers for the purpose of frightening them (pp. 748 and 764). The testimony to this effect of several of the defendants is corroborated by at least one of the State's witnesses, who testified that the shots came down from above as though it rained (p. 413). In the meantime the train pulled out of the station, and as it did so, the strikers continued their charge upon the deputies, who still were firing into the air. The latter succeeded in dispersing the strikers (p. 364).

The case shows that after the strikers and the deputies met, they became intermixed, some of the deputies being on the west side of the railroad track, while many of the strikers at the same time were on the east of the track. In other words, no alignment was preserved, but the affair finally developed into a melee. In the melee, Alesandro Tessitore was fatally shot and severely injured, afterwards dying in a hospital at Elizabeth. By whom he was shot does not appear. The fatal shot en-

tered in the back (p. 195). He also had a gun shot wound on the front of his leg (p. 194). It is not pretended that any one knows who shot Tessitore, nor indeed, is it clear that he was shot by a deputy rather than a striker. The bullet which caused his death was not produced, and although at about twelve o'clock of the day he was shot, the physician at the hospital in Elizabeth seems to have concluded that he was about to die, nevertheless a very serious operation was performed upon him at three o'clock in the afternoon, from the effects of which he never recovered, and the physician who performed the operation was not called. No evidence was introduced by the State identifying any of the defendants as having fired the shot, or in any other manner having assaulted the deceased. Indeed, the State failed to prove that any of the defendants fired a shot. It contented itself with the evidence of the witness Conlon (p. 540, ll. 29-40) a fourteen year old boy who. although admittedly distant about three quarters of a block (p. 565), undertook to identify all of the defendants who were then under trial, except Smith, as being among the forty-five deputies who emerged from the factory, but he would not undertake to identify any particular person as having fired a single shot (p. 567).

Of the forty-five deputies who came out from the plant, twenty-five were indicted for the murder of the deceased, and upon the application of the State, an order of severance was granted, including the defendants, and Smith, who was acquitted.

The deputies, believing themselves to be sworn officers of the law, after the shooting co-operated with the Prosecutor in ascertaining the facts, and frankly gave him written statements of what occurred, many of which were offered in evidence by the State. When later it transpired that they were charged with murder, they voluntarily proceeded

from the factory to New Brunswick to meet the charge, and were later indicted and incarcerated, the twenty-five remaining in custody until after the trial.

The indictment was *certioraried* into the Supreme Court and the defendants were tried by a jury from Mercer County, pursuant to the direction of the Supreme Court ordering a foreign jury. This reduced the defendants peremptory challenges from two hundred to five, and at the trial the Court ruled (p. 172) that the ten defendants were entitled to but five challenges collectively. The case is here on assignments of error, upon exceptions taken during the trial, and upon the whole record, under Section 136 (p. 1230).

The Law.

Inasmuch as it is conceded that on the morning of the 19th of January, 1915, a mob of some eight hundred armed strikers was gathered near the factory and had obstructed the railroad track on which the train containing employes was approaching, and boarded the same, with clubs, it is important that the principles of law applicable be succinctly stated. Our insistence is that these strikers then assembled and their acting were rioters, and that it was not only the right but the duty of the defendants—whether they be called deputies, assistants, guards, or simply citizens—to break up the riot.

A very full discussion of the law of riot is found in the recent case of *Field* v. *Receiver of Metropolitan Police,* (1907) 2 K. B. 853, where PHILLIMORE, *J.*, says:

> "There are five (5) necessary elements of a riot: (1) number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to

help one another by force, if necessary, against any person who may oppose them in the execution of their common purpose; (5) force or violence not merely used in demolishing, but displayed in such manner as to alarm at least one person of reasonable firmness and courage."

A riot at common law has also been defined by KING, *P. J.*, in his charge to the Grand Jury of the County of Philadelphia in *Re Riots of 1844,* 2 Clark 361; 4 P. L. J. R., 29:

> "Every tumultuous disturbance of the public peace by three or more assembled together of their own authority with an intent mutually to assist one another against any who shall oppose them in the execution of some private object, and afterwards executing the same in a violent and turbulent manner to the terror of the people, whether the act intended is lawful or unlawful, is a riot."

It is a riot if firm and rational men, having their families and property there, would reasonably fear a breach of the peace. *Regina* v. *Tyler,* 8 C. & P. 616. Indeed, it is sufficient to make it a riot if any single one person being present be terrified. *Regina* v. *Langford,* 1 C. & M. 602, in which the point was reserved for the consideration of, and held by all the judges of England.

Indeed, in view of the existing riotous condition, the defendants were justified in emerging to suppress the riot, and to go armed, and this, regardless of whether they were sheriff's officers or simply citizens.

In the Case of Arms, *Popham's Reports, 121,* upon the question of whether men may arm themselves to suppress riots, and to endeavor themselves to suppress disturbers of the peace or quiet of the realm, it was resolved by all the justices and barons that every justice of the peace, sheriff

or other minister, *or other subject of the King,* where such intent happened, may do it.

Lord Chief Justice Tindal, in his charge to the Bristol Grand Jury, 5 C. & P. 260; 24 E. C. L. 556, said:

> "In the first place, by the common law, every private person may lawfully endeavor of his own authority and without any warrant or sanction of the magistrate, to suppress a riot by every means in his power. * * * * If the riot be general and dangerous he may arm himself against the evil doers to keep the peace."

The charge on this point was quoted with approval by Willes, *J.*, in delivering the unanimous opinion of the Court of Exchequer Chamber in *Phillips* v. *Eyre,* L. R. 6 Q. B. 1, 15.

See also—

1 Hawkins, P. C., Book 1, Chap. 28, Section 14, page 107.

East, P. C., Section 63, 64, 71.

Wharton Homicide, 3rd Edition, Section 523:

> "It is as much every man's duty to interfere to prevent a breach of the peace as it is to prevent a felony, since a breach of the peace, whether felonous in itself or not, is liable to lead to felony, and felonous rioters resisting lawful authority may be slain with impunity when necessary for the purpose of maintaining or restoring the public peace. And these rules apply to interference by private persons as well as by public officers, since it is their right and duty to aid in preserving the peace."

Pond v. *People,* 8 Mich. 150. In this case the Court said at p. 178:

> "It has been laid down by the authorities that private persons may forcibly interfere to suppress a riot or resist rioters, although a riot is not necessarily a felony in itself. * * *

> Private persons who cannot otherwise suppress them or defend themselves from them may justify homicide in killing them, as it is their right and duty to aid in preserving the peace."

See also—

1 Russell on Crimes, *p. 401;

State v. *Rhodes,* Houston Criminal Cases (Del.) 476.

Linn v. *People,* 48 N. E. 964.

Hancock v. *Baker,* and case in note, 2 B. & P. 264.

Republica v. *Montgomery,* 1 Yeates (Pa.) 419.

In view of the foregoing principles, the defendants clearly were a lawful body when they emerged armed or otherwise from the Williams & Clark plant for the purpose of escorting and protecting persons expected to arrive by the train then pulling into the station and to disperse the rioters.

Even if any of the defendants could be identified as having actually killed the deceased, their doing so, under the circumstances, was justified. The trouble with the State's case is that it was utterly unable to show that any of the defendants—ten of the forty-five deputies—who emerged, did the shooting. Had the sheriff himself been present and fired the fatal shot, he would, under the circumstances, have been justified, and the defendants having been called by the sheriff to his assistance had the same protection which would be offered by the law to that officer.

In a case reported in *I Hales Pleas of the Crown,* 462, a constable, together with several assistants, endeavored to arrest one of a body of rioters. The rioters resisted and killed one of the assistants. Some of the rioters were indicted for murder and tried at the King's Bench Bar. The following points, among others, were resolved:

> "5. It was resolved that the killing of the assistant of the constable was murder as well as the killing of the constable himself.

"6. That those that come to the assistance of the constable, though not specially called thereunto, are under the same protection as they that are called to his assistance by name."

The same author, in referring to justifiable homicide, at p. 494, says:

"4. An officer or baliff that, in execution of his office, kills a person that assaults him, though the officer gives not back to the wall, for the officer is under the protection of the law and the books tell us it is not felony in such case."

And again at p. 495:

"And it seems the same law is for the constable of a vill in case a riot happen within a vill, he may assemble force within his vill to arrest the rioters, and if he or those assembled in his assistance come to arrest the rioters and they resist and be killed by the constable, or any of his assistants, the constable and his assistants are dispunishable for the same, for he is enabled hereunto by the common law as being an officer for the preservation of the peace, and he may command persons to his assistance and if they refuse they are fineable for it."

4 *Blackstone's Commentaries,* Chap. 14, *p. 180:

"In the case of a riot or rebellious assembly, the officers endeavoring to disperse the mob are justifiable in killing them both at common law and by the riot act."

MacKalley's Case, 9 Coke 68, held that an officer meeting with opposition need not retreat to the wall before being able to justify his killing. This case was cited with approval by DEPUE, *J.*, in delivering the opinion of the Court of Errors and Appeals in *Brown* v. *State,* 33 Vr. 666, at p. 697.

See also—

Section 106 of the Crimes Act of 1898; C. S. 1779.

Regina v. *Porter*, 12 Cox, C. C. 444. This was a case where A and B were orally accused of larceny and a police constable summoned a by-stander to help him arrest them. The by-stander was killed by a kick in A and B's resistance. It was held that:

> "The deceased, however, was entitled to the same protection as the police constable himself."

State v. *Dieberberger, 10 S. W. 168,* (Mo.) supra, Here a de facto peace officer interfered to suppress a breach of the peace, and meeting with opposition, killed. It was held that he had more than the right of self-defense, the Court saying at p. 171:

> "They (referring to authorities) show that the protection which an officer is entitled to receive is a different thing from self-defense. The officer, when making an arrest, may, of course, defend himself, as may any other person who is assaulted; but the law does not stop here. The officer must of necessity be the aggressor. His mission is not accomplished when he wards off the assault. He must press forward and accomplish his object. He is not bound to put off the arrest until a more favorable time. Because of these duties devolved upon him the law throws around him a special protection. * * * The defendant was entitled to a plain instruction to the effect that he had a right, in endeavoring to make the arrest, to use all the force that was necessary to overcome all resistance, even to the taking of life; and if he used no more force than was reasonably necessary to then and there accomplish the arrest, then he should be acquitted."

This case is important because the defendant was only a de facto peace officer. In the case at bar the defendants are entitled to the same protection in their reasonable efforts to escort the people from the train into the factory, or in suppressing the

riot, that the defendant in *State* v. *Dieberberger* was, in his efforts to make the arrest. Of course, the defendants in the case at bar are entitled to the same protection in their efforts to reach the train where the expected passengers were, as they would be on the return journey with the passengers.

Cockrell v. *Commonwealth,* 23 S. W. 659 (Ky.) The defendant was indicted for murder. He had been summoned by a peace officer to aid in suppressing disorder. Upon being threatened by a rioter, he withdrew, procured a deadly weapon and returned. After his return, in assisting the officer, he killed one of the rioters. In holding that the defendant properly did so, the Court said:

> "When driven off the grounds at the point of the knife by the unruly assistant of the resisting prisoner to arrest and imprison whom he was summoned by the officer, shall the defendant fail or refuse to return, or returning shall he be required to escape impending danger by flight? Not even the rigid requirements of the common law would demand this of him."

See also—

Bowman v. *Commonwealth,* 27 S. W. 870.

Tinney v. *Commonwealth,* 82 S. W. 636.

Regina v. *McNaughton,* 14 *Cox C. C.* 576 (*Q. B. D. Ireland,* 1881.)

Lord Chief Justice Tindal, in his charge to the *Bristol Grand Jury, 5 C. & P. 260, 24 E. C. L. 556,* said, among other things:

> "But if the occasion demands immediate action and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common

law, and whilst I am stating the obligation imposed by the law on every subject of the realm, I wish to observe, that the law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation and invested with the same authority to preserve the peace of the king as any other sub ject."

Practically the same language was used in KING, *P. J.*, in his charge to the Grand Jury of Philadelphia County, in *Re Riots of 1844,* 2 Clark 361, 4 P. L. J. R. 29, *supra.*

JONES, *J.*, in his charge to the Grand Jury in *Re Riots of 1844,* 2 Clark 135; 3 P. L. J. R. 394, said, among other things:

"The law knows nothing of a false humanity of the laws of bad men, that it spares them at the expense of the blood of the good. The men who array themselves forcibly against the laws, forfeit all rights, but those of rebels and enemies, may be killed as legitimately as the foreign invader, and ought to be killed as a duty if they cannot be overcome. The sheriff who will not act out this principle is afraid to look his official responsibilities in the face and should not have ventured on his commission. * * * * If the sheriff did not summon according to the time allowed a sufficient posse, even every able-bodied man in the county, and properly armed, if the occasion required, or if he forebore to exercise in any way, his extensive powers to protect property, preserve the peace, and restore order, he is guilty of a similar offense."

In *Commonwealth* v. *Daley,* 2 Clark (Pa.) 361, 371, KING, *P. J.*, said:

"Under what circumstances the lives of rioters concerned in the commission of unlawful acts may be justly taken, by officers or citizens, I have had occasion to express during the

present term. I then stated that when an actual riot exists particularly when life and property is threatened by the insurgents, citizens may of their own authority, *lawfully endeavor to suppress the riot, and for that* purpose may even arm themselves; and that whatever is honestly done by them in the execution *of that object,* will be supported and *justified* by the law. But I expressed in my opinion and still think, that citizens using such force had better be assistant to the sheriff and public functionaries, than to assume such an urgent authority, except in cases of the extremest necessity. But if, under proper circumstances, the law will extend to citizens, the same indemnity, in resorting to extreme measures for the suppression of dangerous riots, that it affords to officers acting for the like object, it will certainly extend no greater. How this authority is to be exercised by sheriffs I have expressed in the opinion referred to (supra) in these words: 'When engaged in the suppression of dangerous riots, the sheriff and his assistants are authorized to resort to every necessary means to restore peace, and prevent rioters, detain and imprison them. If they resist the sheriff and his assistants, in their endeavor to apprehend them, and continue their riotous actions, under such circumstances, the killing becomes justifiable. There is nothing here said or intended to convey the idea, that a mere unlawful or even riotous assembly can be shot down by musketry without any previous effort being made to suppress it by less bloody and more pacific measures. It is when the conservator of the peace is contemned and resisted, and the law and its ministers set at defiance, that he is authorized to vindicate its majesty at all hazards. * * * The law recognizes the existence of a necessity for the suppression of riot and rioters by extreme means; but it is a necessity only justifiable in extreme cases. Where indeed rioters exhibit a spirit that man-

ifestly would mock expostulation; where they at once enter upon a predetermined work of destruction, and execute it under circumstances of violence and ferocity; and with the display of force clearly manifesting that delay in action for the employment of remonstrances would be useless and pernicious, then such a mob may be regarded and treated as a common enemy.'"

In view of the foregoing principles of law, which seem to be firmly settled, the defendants requested the Judge to charge the jury as follows (p. 1205):

(2)

"If the jury believe that the strikers, on the morning of January 19th, were engaged in what is known as a riot, then the defendants had the right to use all reasonable means to suppress the riot and preserve peace and protect life, and if the jury believes that what occurred, so far as any of the defendants are shown to be responsible therefor, only occurred while the defendants, or such of them as are shown to have been engaged in the transaction, were protecting life or endeavoring to suppress a riot or unlawful assembly, or to disperse such a gathering, then there must be an acquittal.

(3)

There are five necessary elements of a riot: 1. There should be three persons at least; 2. With a common purpose; 3. Having at least entered upon the execution of such purpose; 4. With intent to help one another by force, if necessary, against any person who may oppose them in the execution of their common purpose; and 5. Displaying force or violence in such manner as to alarm at least one person of reasonable firmness and courage. If the jury believe that this situation existed near the Williams & Clark plant on the morning of

the 19th, then it was the privilege and duty of the defendants, as well as of all citizens, to use all reasonable means to suppress the same.

(4)

If the jury conclude that the situation described in the last foregoing request existed, the defendants not only had the privilege and duty to suppress the same, but they were also justified in carrying arms in the performance of such duty.

(5)

It was not the duty of the defendants to remain behind the fence of the Williams & Clark plant if a riot or disorderly and tumultuous crowd were assembled and violating the law, threatening property and life. It was their duty to undertake to suppress the same and to prevent the further prosecution of these unlawful acts, and in so doing they were justified in leaving the plant and approaching and endeavoring to disperse the crowd, and to use all necessary force requisite to effect that end."

These requests were not charged. On the contrary the learned judge charged as follows (p. 1215):

"It appears, so far as I can judge from this evidence, that on the 19th day of January, a body of men who had quit work, and who have been denominated as strikers in this cause, and I suppose properly so, gathered about the railroad station at what is called the Williams & Clark station, and stopped a train; they stopped a train some distance above the station; the body of men was quite large, three or four hundred of them, and apparently for the purpose of ascertaining whether there were any persons that they call strike breakers, that is, persons who were going to this factory to take the places which they had left, and find-

ing none, the train was allowed to proceed. That was an unlawful act on the part of the strikers, and the law makes that punishable; these men who did that thing can be indicted, there is a special statute with reference to stopping trains; but that fact, or those facts standing alone, was no justification for taking a man's life. If that was an unlawful assembly, the sheriff of the county had a right to go there and have the assembly disperse, and to take such necessary steps as the situation required. But before he can shoot into a crowd like that and take life, he must try some other less drastic and more peaceable method.

"The law of New Jersey authorizes the sheriff, when there is an unlawful assembly, to read what we call the 'riot act,' and then if, after an hour, these people do not disperse, the sheriff is justified in arresting every one of them as law breakers, and if they resist the sheriff in making that arrest, and they are killed, the sheriff is not liable. *But I do not understand that it is pretended in this case that the sheriff did any such thing.* That is the claim of the State practically and shortly stated. That is, that while these men were there doing an unlawful thing, that is, the gathering together in an unlawful assemblage, these persons they call the deputies came out from the factory and fired on them and dispersed them.

"Nor has the sheriff any right to swear in what he calls deputies. Under the law of New Jersey the sheriff has a right to appoint an under sheriff. That man takes an oath, and he gives a bond, and is authorized to act for the sheriff. But there is no statute in this State which permits the sheriff to pick out a number of men and swear them in as deputies, and turn them loose to act for him in criminal matters, in his absence. The sheriff has a right to call to his assistance men, citizens of the county, and they need not be sworn in.

That is a mere empty form, the swearing in of these men was of no consequence. It did not do any harm, but it did not confer any power on these men. What I understand is that these men were employed, by whom does not very clearly appear, the sheriff has not been called as a witness to give us any light on that subject, or to testify as to whether he appointed these men deputies, or whether he gave them any authority to act for him. All we have in this case is the testimony of these defendants, that is, so far as I recall, that they were sworn in as deputies. But you may assume, I think, for the purpose of this case, that while these men were not deputies, endowed with any power to exercise the office of sheriff, that they were there as the sheriff's assistants, that is, if the sheriff had been there and has led these men out, or directed them to suppress a riot, or an unlawful assemblage, they would be what is ordinarily called the sheriff's assistants. But I fail to see in this evidence anything from which you can infer that the sheriff of this county employed those men and authorized them to do what they did do. So far as I can see, or recall from this evidence, these men were simply employed to protect that factory, and employed from some agency in Newark, at, perhaps, the request of the sheriff, or at least, with his consent. But that calling in men and appointing assistants to protect a piece of property is a very different thing *from turning a body of men loose to go about the county suppressing what they may think unlawful assemblages.* If I am mistaken about this evidence, of course, you will correct me, but that is the way it strikes me."

Exception was duly taken to the failure to charge as requested, as well as to the language of the charge contained in the foregoing extracts (pp. 1225, 1226 and 1227, and error is duly assigned

thereon (p. 1246 et seq). We think there were several substantial errors in the position thus taken by the trial judge.

I.

THERE WAS NO NECESSITY FOR THE "RIOT ACT" TO HAVE BEEN READ, OR THE OTHER FORMALITIES PRESCRIBED THEREIN TO HAVE BEEN PURSUED.

The strikers were not any the less riotous because the *Riot Act* (C. S. 4380, Secs. 1 & 2) was not read. That statute, which is in substance the same as that of England and of our sister States, provides simply for a definite course of conduct. A riot may exist although the procedure of the Riot Act be not followed, and steps may be taken to suppress it. This is clearly established by the following cases:

Rex v. *Kennett,* 5 C. & P. 282. (*Note*) This was an indictment against a magistrate for neglect of duty in time of a riot. The Riot Act was not read. In charging the jury Lord Mansfield, *C. J.*, said, among other things, at page 295:

> "By the first act of the first George the 1st, a particular direction was given to every justice for his conduct. He is required to read the act, and the consequences are explained. It is a step *in terrorem* and of gentleness and is not made a necessary step as he may instantly repel force by force."

Lord Loughborough, in his charge to the Grand Jury on the special commission for the trial of rioters in 1780, 21 State Trials 485; 5 C. & P. 260. (*Note*) said:

> "I take this public opportunity of mentioning a fatal mistake into which many persons have fallen. It has been imagined because the law allows an hour for the dispersion of a

> mob to whom the riot act has been read by the magistrate the better to support the civil authority that during that time the civil powers and magistracy are disarmed and the King's subjects whose duty it is at all times to suppress rioters are to remain quiet and passive. No such meaning was within the view of the legislature nor does the operation of the act warrant such effect. The civil magistrates are left in possession of those powers which the law had given them before. If the mob qualified, or a part of it, or any individual, within or before the expiration of that hour attempts or begins to perpetrate outrage, meaning felony to pull down a house, or by any other act to violate the law, it is the duty of all persons, of whatever description they may be, to endeavor to stop the mischief and apprehend the offender."

Rex v. *Fursey,* 6 C. & P. 81 (Old Bailey Sessions), before two judges and the magistrate. GASELEE, *J.,* in charging the jury, said:

> "Now a riot is none the less a riot, and an illegal meeting the less an illegal meeting because the proclamation of the riot act has not been read, the effect of that proclamation being to make the parties guilty of a capital offense if they do not disperse within an hour, but if the proclamation be not read the common law offense remains and it is a misdemeanor, and all magistrates, constables and even private individuals are justified in dispersing the offenders, and if they cannot otherwise succeed in doing so, they may use force."

See also—

State v. *Russell,* 45 N. H. 83.

Commonwealth v. *Runnells,* 10 Mass. 518.

1 Russell on Crimes, *p. 392.

The undisputed facts are that the sheriff having been notified that the county would be held responsible for any damage done to property by the

rioters, swore in as deputies a body of men, including the defendants, provided them with badges, and in effect called them to assist him in keeping the peace.

In view of the existing conditions, the riot, obviously, was beyond the power of the sheriff, unaided, to cope with, and it was his duty to do exactly that which he did, namely, to call for assistance. He did call, and the defendants are among those who came to his assistance. Such has been the sheriff's right and duty from the earliest days.

Dalton's Sheriff, Chap. XCV, p. 335.

> "The sheriff also may take posse comitatus (any number that he shall think meet) to pursue, apprehend, arrest and imprison traitors, murderers, robbers, and other felons, or such as do break or go about to break or to disturb the king's peace."

And such is the law today. KING, *P. J.,* in his charge to the Grand Jury of Philadelphia County, Pa., in *Re Riots of 1844,* 2 Clark, 361; 4 P. L. J. R. 29, said, in referring to the sheriff's duties in case of a riot:

> "Of course, to execute such duties and encounter such responsibilities he must have the means of commanding adequate physical force. For this purpose, *every citizen,* capable of bearing arms, of every rank, description and denomination is bound to yield to prompt obedience to his command."

In *Commonwealth* v. *Martin,* 9 Kulp (Pa.) 69, WOODWARD, *P. J.,* in charging the jury, said:

> "But the place and function of the sheriff is easily determined. He has been for all times the chief peacemaker of his bailiwick. Under the systems of government which have recognized the law as a Supreme Court rule of action, it has been found to be absolutely necessary to vest in some one person the ultimate power to preserve the peace, to quell dis-

order and to suppress riot, and this person is the sheriff and his power is largely a discretionary one. In a time of great emergency or in a crisis of unusual danger the limits under which his discretion may be exercised have been held by the courts to be without fixed limits."

Notwithstanding this principle, the judge, as we have already seen, charged the jury as follows (p. 1216):

"The law of New Jersey authorizes the sheriff, when there is an unlawful assembly, to read what we call the 'riot act,' and then if, after an hour, these people do not disperse, the sheriff is justified in arresting every one of them as law breakers, and if they resist the sheriff in making that arrest, and they are killed, the sheriff is not liable. But I do not understand that it is pretended in this case that the sheriff did any such thing." (See pp. 1246, 1250 and 1251.)

II.

THE DEFENDANTS, THOUGH NOT RESIDENTS OF THE COUNTY, WERE LAWFULLY SELECTED BY THE SHERIFF IN THE EMERGENCY.

While is does not appear that the sheriff was himself at the scene, nevertheless his special representative, Constable Revolinski, was there under the sheriff's directions (p. 790, ll. 4-5).

Section 73 of the Criminal Procedure Act of 1898, (C. S. 1844) provides:

"No sheriff or other person authorized to appoint special deputy sheriffs, constables, marshals, policemen or other peace officers in this state to preserve the public peace and prevent and quell public disturbances, shall appoint as such any person who shall not be a qualified voter of this State."

This shows that the sheriff has authority to appoint special deputy sheriffs to preserve the public peace and prevent and quell public disturbances. The same implication is found in Section 7 of the Disorderly Persons Act, (Rev. of 1898) (C. S. 1928), and the supplement to the Crimes Act, P. L. 1912, 364, which makes carrying any dangerous weapon a misdemeanor, with a proviso in favor, among other things, of deputy sheriffs.

Turning to the common law, we find the situation even more clear. Those who come to the sheriff's assistance are frequently described as being the posse comitatus, or the power of the county. Of course a mere matter of *nomen collectivum* does not and cannot affect the rights and duties of persons answering the sheriff's summons. It is important, however, as being the sole basis for the foundation of the notion that the sheriff may call for assistance from only those who are citizens and inhabitants of his county. An examination of the books will show not only that no such limitation has ever been laid down, but also that express principles have been established which are wholly inconsistent with the aforesaid notion.

Dalton, in his *Treatise on Sheriffs,* published in 1700, begins his Chapter XCV as follows:

> "WHEN SHERIFF MAY TAKE THE POSSE COMITATUS. The sheriff or under sheriff or baliff, etc., may (nay ought if need be) to take the power of the county of the numbers of persons they shall think good; to aid him or them to execute in their behalf the king's peace or right—* * * it being the king's commandment; and such as shall not assist the sheriff, &c., therein being required shall pay a fine to the king."

LORD CHIEF JUSTICE TINDAL, in his charge to the Bristol Grand Jury, under special commission, on the 2nd of January, 1832, reported in the note to *Rex* v. *Pinney,* 5 C. & P. 260; 24 E. C. L. 556, said:

> "Still further by the common law not only is each private subject bound to exert himself to the uttermost, but every sheriff, constable and other peace officer is called upon to do all that in them lies for the suppression of riot and each has authority to command the other subjects of the king to assist them in that undertaking. * * * And here I most distinctly observe that it is not left to the choice or will of the subject, as some have erroneously supposed, to attend or not to the call of the magistrate, as they think proper, but every man is bound, when called upon, under pain of fine and punishment, to yield a ready and implicit obedience to the call of the magistrate and to do his utmost in assisting him to suppress any tumultuous assembly; * * *. In later times the course has been for the magistrate on occasions of actual riot and confusion to call in the aid of such persons as he thought necessary and to swear them as special constables and in order to prevent any doubt, if doubt could exist, as to his power to command their assistance, by way of precaution, the statute I Geo. 4, C. 37, and since that has been repealed by the still more recent Act 1 and 2, William IV, C. 41, the statute last referred to has invested the magistrate with that power, in direct and express terms, when tumult, riot, or felony was only likely to take place, or might reasonably be apprehended."

JONES, *J.*, in his charge to the Grand Jury of Philadelphia County, Pennsylvania, in *Re Riots of 1844,* 2 Clark, 135; 3 P. L. J. R. 394, said:

> "The sheriff must immediately summon the power of the county, the posse, every able-bodied man if necessary, a less number if

sufficient. If the rioters are armed or too numerous to be over-awed by the moral force of mere numbers, he must command every man he summons to bring his arms; *and whether commanded or not, every man summoned on the sheriff's posse has the right to come armed.*

"When the power of the county is convened, the legal means which the law requires the sheriff to use, are every means, physical and moral, which his array puts at his command, and the occasion requires. In enforcing the laws, it is hard to say what a sheriff may not do. The public danger seems to give him, at common law, a measure of those powers which, in similar emergencies, the Roman Senatus Consultum conferred on their dictators. * * * In all sudden emergencies affecting generally the country, it seems officially responsible 'that the public receive no harm.' These extensive powers and duties, at common law, are not narrowed by anything in our own criminal code."

Rex v. *Pinney,* 3 B. & A., 947; 23 E. C. L. 412; S. C. 5 C. & P. 254; 24 E. C. L. 552. This was a trial at the bar of the King's Bench of the Mayor of Bristol for neglect of duty at the time of a riot. It holds that *any* of the *King's subjects,* civil and military, are subject to call for the posse comitatus. In the course of his charge to the jury, LITTLEDALE, *J.*, with whom the other judges concurred, said:

"It appears that so early as on Saturday evening something was said about the calling out of the posse comitatus, but that that could not be effected that night. Now, the calling out of the posse comitatus may be by a justice or by the sheriff and the calling out of the posse comitatus is only the calling out of the people to assist the magistracy and what was done by the mayor on the Sunday morning was the same in effect only there was not the formality of summonses."

In *United States* v. *Fenwick,* 4 Cranch, C. C. 675, it was held that the United States Marshal of the District of Columbia has the right to take a posse and to call on all citizens to aid him in arresting the rioters.

In *Commonwealth* v. *Martin,* 9 Kulp (Pa.) 69, supra, the Court said, among other things:

> "The sheriff may avail himself of the services of military organizations. He may order them into his posse not as soldiers, but as citizens, trained and disciplined for effective service in critical emergencies."

Commonwealth v. *Wadsworth,* 55 Atl. 592 (Pa.) In this case a strike had assumed such proportions that a regiment of the militia had been sent and a private in the militia, obeying an order of a superior officer, shot a person whom he mistakenly supposed to be a rioter. The Court on habeas corpus released the private from custody and held him exempt from liability. MITCHELL, *J.,* for the Court, saying:

> "When a riot assumes such proportions that it cannot be quelled by ordinary means, and threatens irreparable injury to life or property the sheriff may call forth the posse comitatus and exercise an authority as their chief which can hardly be distinguished from that of a general engaged in repelling a foreign army or subduing a revolt."

In this case, as well as in *Commonwealth* v. *Martin,* and *Rex* v. *Pinney, supra,* the military force were treated as part of the *posse comitatus.*

The regular army of Great Britain and the militia of our States know no county lines. Indeed, the common practice in this country which was followed in *Commonwealth* v. *Wadsworth, supra,* is to send the militia from a different section of the State into the disaffected territory. Upon its arrival, it and all others who are helping the sheriff, become the power of the county.

Very strong against the notion that the sheriff may call only upon the citizens of his county is the following dictum of GUMMERE, *C. J.*, in delivering the unanimous opinion of the Court of Errors and Appeals in *State* v. *Bertchey,* 48 Vroom, 640, 641:

> "The law does not require that a citizen, before answering to the call of a police officer for assistance in the arrest of a criminal, shall first be informed of the particular crime which the defendant has committed, nor does it require that the citizen shall be selected by the officer in order to justify him in rendering assistance. A general call by an officer for assistance in arresting a fleeing criminal not only may, but ought to be responded to by all persons within sound of his voice who are physically able to render him aid. * * *"

The use of the military force, together with the unrestricted language requiring all citizens or subjects to answer the sheriff's call, show that his right to call for aid is not limited to the persons who are domiciled within the bounds of his county, and that the posse comitatus is the body summoned by the chief magistrate of the county to keep the peace of the county, and is not required to be summoned from among the county's citizens.

The only limitation on the sheriff to citizens of his county is that found in *P. L.* 1911, 718, which requires sheriffs of first-class counties to appoint court attendants from among the qualified electors. This statute, obviously, has nothing to do with the case at bar.

The conclusion, therefore, is that the sheriff in calling upon the defendants to aid him in dealing with the riot and in preserving the peace at Roosevelt did only what is and has been from time immemorial the strict legal duty of the sheriff. It follows, therefore, that the defendants

as called together and formed into a body, were a lawful body.

The last mentioned conclusion also follows even if the sheriff, in calling them together, should have made some slip or deviation from the straight path outlined by law. If the defendants, in good faith, responded to the call of the sheriff and in like manner did actually act under him, they are just as much protected for their acts done in good faith pursuant to his call, if the call be actually illegal, as though it were in all respects legal. The following cases establish this principle:

Watson v. *State,* 3 Southern 441 (Ala.) The defendant was indicted for an assault. He had been summoned by a peace officer to arrest W. For his act in so doing he was arrested. The officer had no warrant against W. but against another person. The defendant acted in good faith and at the officer's command. *Held*: That he is justified and therefore dispunishable. The Court said:

> "The officer, if acting without warrant, may be a trespasser; but the private person may rely upon his known official character and his call for aid and will be protected in doing what he is not at liberty to refuse or neglect. It is sufficient if the general official authority of the person calling for aid to make arrests is known."

To the same effect is:

McMahan v. *Green,* 34 Vt. 69; 80 Am. Dec. 665.

State v. *Dieberberger,* 10 S. W. 168 (Mo.) The defendant was indicted for murder. He had been appointed a deputy constable, but had not taken his oath or filed his appointment, as required by law. He interfered to suppress a breach of the peace and, meeting opposition, was killed. The Appellate Court held that his right to act was

the same as if he had taken his oath of office and registered his appointment.

Bullock v. *State,* 36 Vroom 557. (Errors & Appeals.) Here the defendant was charged with murder. The deceased had been elected constable, but had neglected to renew his bond. The statute provides that by his failure so to do his position should become vacant. After a year's delay he filed his bond, which was accepted by the township officers. The continuance of the deceased in office was recognized by the public authorities and his official character was shown by such evidence as is uniformly regarded a sufficient proof of an official position. At the time he was killed he was in the execution of the duties of the office of constable. The Court held that the killing of the deceased was just as much murder as if he were a constable de jure.

The public policy behind all of the foregoing decisions is one and the same. Its merit and force are obvious. Officers of the law must be able to count on ready assistance. This assistance will not be forthcoming if the assistants act at their peril of being able to establish the legal authority to the officer to call on them.

Notwithstanding these principles, the learned trial judge, as we have already seen, charged as follows (p. 1216):

> "Under the law of New Jersey the sheriff has a right to appoint an under sheriff. That man takes an oath, and he gives a bond, and is authorized to act for the sheriff. But there is no statute in this state which permits the sheriff to pick out a number of men and swear them in as deputies, and turn them loose to act for him in criminal matters in his absence. The sheriff has a right to call to his assistance men, *citizens of the county,* and they need not be sworn in. That is a

mere empty form, the swearing in of these men was of no consequence. It did not do any harm, but it did not confer any power on these men. What I understand is that these men were employed, by whom does not very clearly appear, the sheriff has not been called as a witness to give us any light on that subject, or to testify as to whether he appointed these men deputies, or whether he gave them any authority to act for him. All we have in this case is the testimony of these defendants, that is, so far as I recall, that they were sworn in as deputies." (See p. 1246, assignment 79.)

III.

NOR WAS IT NECESSARY FOR THE SHERIFF TO HAVE BEEN PERSONALLY PRESENT.

It appears in the case that both the Williams & Clark and the Liebig plants were under a state of siege, and that the sheriff and his deputies were engaged in protecting both, and it is a mistake to suppose that the presence of the sheriff at the Williams & Clark plant was necessary in order to justify his deputies in protecting life and property, or in dispersing the crowd. Indeed, it was a physical impossibility for him to be at both plants at the same time, and it was the duty of those called by the sheriff to assist him generally in the disturbance, to act as though the sheriff were actually present.

Coyles v. *Hurtin,* 10 Johns 85 (N. Y.). This was an action of assault, battery and false imprisonment against the sheriff. The latter having a warrant to arrest certain persons, went to do so, and meeting with opposition directed the plaintiff to keep watch on the persons named in the warrant, while he (the sheriff) went for assistance,

On the sheriff's returning with assistance he found that the plaintiff had neglected to watch. He, therefore, apprehended the plaintiff. The opinion of the Court was delivered by KENT, *C. J.*, who said, among other things:

> "Every man is bound to be aiding and assisting, upon order or summons, in preserving the peace and apprehending offenders, and is punishable, if he refuses. The sheriff is quodam modo, present by his authority, if he be actually engaged in efforts to arrest, dum fervet opus, and has commanded and is continuing to command and procure assistance. When he is calling on the power of the county, or a requisite portion of it, to enable him to overcome resistance, it would be impossible that he should be actually present in every place where power might be wanting. The law is not so unreasonable as to require the officer to be an eye or ear witness of what passes, and to render all his authority null and void, except when he is so present. * * * He is present in judgment of law, by his authority, and every person who aids him, in pursuance of his summons, acts under the same protection, and the same responsibility, as if the sheriff stood in his view."

See also:

Rex v. *Pinney,* 23 Eng. C. L., 412; 24 Id. 552.

Notwithstanding these principles, the learned judge charged the jury (p. 1217) as follows:

> "* * * if the sheriff had been there and had led these men out, or directed them to suppress a riot, or an unlawful assemblage, they would be what is ordinarily called the sheriff's assistants."

In other words, the practical effect of this was to give the jury the impression that in the absence of the sheriff the defendants had no right to suppress the riot. (See page 1246, assignments Nos. 77 and 79.)

IV.

THE COURT ERRED IN OVERRULING CHALLENGES TO CERTAIN JURORS, AND REFUSING TO PERMIT THEM TO BE SWORN.

The case shows that Juror Lewis P. Fuhrman was drawn from the panel and called (p. 175), whereupon defendants' counsel challenged him (ibid, l. 22).

> "On the ground that this talesman is a person likely to be interested in the labor union to an extent which might bias him from rendering a verdict according to the evidence in this case."

Whereupon the challenge was overruled.

Juror Albert Wooley was then called (p. 176) and defendants' counsel (*ibid,* l. 8) stated:

> "Challenge to the favor, and we ask this juror be sworn for the purpose of eliciting information as to whether or not he possesses any bias which would prevent him from rendering an impartial verdict according to the evidence."

This challenge was overruled.

Juror Albert H. Bradshaw was then called (p. 178) and defendants' counsel stated (*ibid,* l. 12) that he was challenged:

> "To the favor, and my objection will have to be changed a little. I desire to elicit information from the gentleman as to whether or not his commercial associations are such as would prevent him from rendering a verdict in this case according to the evidence."

This challenge was likewise overruled, and challenges of the same nature to Jurors Greene, Hartman, Blauth, Berrien, Nichelson, Koenig, Steele and Clugston (pp. 178-182) were similarly treated.

We submit that this action of the trial judge was erroneous. (See 3rd to 17th assignments of error, pp. 1233-1236.)

As already pointed out in this brief, the circumstances surrounding the shooting of the deceased were such as to arouse an antagonism between labor and capital. On the one side were arrayed those who favor, not only labor unions, but their right to maintain a strike at almost all hazards. On the other hand were they who sympathize with the efforts of capital to prevent strikers from interfering with the ordinary prosecution of its business. Throughout the case reference was made time and again by the Attorney General to strike-breakers, and, as pointed out herein, to inflame and prejudice the minds of the jury because of the fact that the defendants had previously served to protect the property and lives of persons belonging or attached to the business enterprises where strikes were under way. In one instance, the learned Attorney General went so far (p. 1153, l. 20) as to say to a witness "by selling your manhood to a labor union." The Court will also bear in mind that it was not until the eleventh of May, nineteen hundred and fifteen, that the Supreme Court ordered a foreign jury (p. 20), and as the trial commenced on the 24th of May (p. 167), but thirteen days intervened in which the general panel had to be chosen by the sheriff of Mercer County, and served upon the defendants. They were, consequently, very much crippled and handicapped in their ability to ascertain the feeling of the hundred persons who were entire strangers, chosen from a foreign county. Under the rule established by this Court in *State* v. *Clifford,* 61 N. J. L., 217 (contrary to the rule elsewhere), they were prevented from examining the jurors for the purpose of eliciting information upon which to base a

peremptory challenge. They undoubtedly, however, had a right to challenge, and, having stated a valid cause of challenge, to have it tried. *Patterson* v. *State,* 48 N. J. L., 381; *O'Donnell* v. *Weiler,* 59 Atl. Rep. 1055.

The form of the challenge was correct (*State* v. *Drake,* ~~22~~ 53 N. J. L., 23).

The question then arises whether the fact that the jurors, by reason of their connection with or belief in labor unions, were biased against the defendants, and that the bias was such as that "it would prevent them from rendering an impartial verdict according to the evidence," was not under the rule prevalent in this State, the statement of a sufficient cause to require the trial judge to proceed and ascertain the facts.

In *State* v. *Fox,* 1 Dutcher, 566, Chief Justice Green, while holding that the mere fact that a proposed juror had expressed an opinion hostile to the defendant was an insufficient cause of challenge, distinctly stated:

> "A man heated by passion, excited by controversy, or inflamed by party strife, labors under a moral bias. When this is proved to exist the challenge may be sustained."

This Court in *Wilson* v. *The State,* 31 Vr. 171, quoted with approval Chief Justice Hornblower's statement of the rule in Spencer's case, 1 Zab. 196:

> "A declaration of opinion to disqualify a juror, therefore, must be such as an one *as implies malice or ill-will against the prisoner, thereby showing that the person challenged does not stand indifferent between the state and him.*"

And this Court in *State* v. *Overton,* 56 Vr. 287, in holding that there was no legal ground for requiring the trial court to grant a continuance, or to discharge a special panel from which the

jury was to be selected, because of a statement alleged to have been made by the prosecutor and reported in the newspapers concerning the panel, said:

> "Of course, a court cannot be put in error by the mere publishing of a newspaper reports. While it may be that in cases of public excitement the possible effect of newspaper articles upon the jury may justify the court in its discretion in adjourning a trial and summoning another jury, it has never, in this state, been a ground of challenge to a juror, that he had read newspaper reports relating to the case, so long as he declares his ability to consider the case on the evidence."

In *Gatzow* v. *Buening* (Wis.), 81 N. W. Rep. 1003, a suit was brought for conspiracy on the part of the owners of funeral equipages, for withdrawing a hearse and carriage from a funeral, because of the fact that the undertaker who hired the carriages was not a member of the union, and the Court held that questions put to jurymen during the impaneling as to their being biased against unions, were improperly excluded.

In *State* v. *McAfee,* 64 N. C., 339, it was held to be a cause for challenge when one feels that he cannot do impartial justice to a person of a particular race on the prosecution of such person, and so it was held in *People* v. *Reyes,* 5 Cal. 347, competent to inquire of a proposed juror whether he belonged to a secret order involving an obligation which created prejudice against foreigners.

Not only were the defendants prevented from eliciting, in the regular way, by an examination before a court on the jurors *voir dire,* information as to whether or not the proposed jurors entertained such a bias against the defendants as that they were not impartial, and would be unable to

render an impartial verdict, but they were compelled, when the challenge was overruled, in view of the paucity of peremptory challenges accorded them (being limited to only five) to accept the jurors thus challenged, whose sensitiveness and prejudice, if true, could not but have been increased by the overruled challenge.

We believe there is no legal justification for this action.

It is fundamental that the challenger for cause is entitled to examine the challenged party under oath.

State v. *Zellers,* 7 N. J. Law, 220.
State v. *Fox,* 1 Dutch. 566.
State v. *Spencer,* 21 N. J. Law, 196.

V.

THE TRIAL JUDGE ERRED IN CONFINING THE DEFENDANTS TO FIVE PEREMPTORY CHALLENGES.

Ten defendants were being tried under an indictment charging them and fifteen associates with murder. Pursuant to the order of the Supreme Court a foreign jury from Mercer County was summoned to try the case, and at the threshold of the trial the defendants (p. 169) raised the question as to whether they were each, or only collectively, entitled to five peremptory challenges; and after argument the Court concluded (p. 172, l. 15):

> "I have come to the conclusion that where there is more than one defendant, they are only entitled to challenge collectively."

Section 81 of the Criminal Procedure Act provides:

> "Upon the trial of any indictment for which a struck or foreign jury shall be sum-

moned and returned, five peremptory challenges each shall be allowed to the defendant and to the state."

This clause was the subject of construction in *Moschell* v. *The State,* 24 Vr., 498, by the Supreme Court, consisting of Chief Justice Beasley, and Justices Dixon, Magie and Garrison. Judge Magie's opinion in that case was adopted by this Court on review in 25 Vr., 390. The precise question there involved was as to the number of peremptory challenges of struck jurors several defendants, who were jointly indicted for an offense not designated or referred to in Section 80 of the Criminal Procedure Act, were entitled to. In that opinion, Mr. Justice Magie was construing the then Section 40 of the Jury Act *in pari materia* with Section 71 of the Criminal Procedure Act as it then existed (Rev., p. 530; *id.* p. 280). Section 71 is and at the time of the trial below, was the present Section 80 of the Criminal Procedure Act (2 Comp. Stat., p. 1846). It provides as follows:

"Every person who shall be indicted for treason, murder, misprison of treason, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, perjury or subornation of perjury, and shall plead the plea of not guilty to such indictment, shall be admitted peremptorily to challenge twenty of the jury and no more."

Section 40 of the Jury Act as then existing had practically the same provisions with the same section in the present jury act (3 Comp. Stat., p. 2977). It provides as follows:

"That upon the trial of any issue in any civil suit or action in any court of this state, each party shall be entitled to challenge peremptorily, as their names are drawn from the box, three of the general panel of jurors summoned and returned by the sheriff or other officer; and upon the trial of any in-

dictment where twenty peremptory challenges are not allowed, the defendant or defendants shall be entitled to challenge peremptorily, as their names are drawn from the box, three of the general panel of jurors summoned and returned by the sheriff or other officer."

The pertinent provisions of the present Section 81 of the Criminal Procedure Act were not apparently a part of that act prior to the Revision of 1898 (P. L. 1898, p. 1846). They are:

"Upon the trial of any indictment where twenty peremptory challenges are not allowed, the defendant or defendants, and the attorney general or the prosecutor of the pleas shall each be entitled to challenge peremptorily ten of the general panel of jurors summoned and returned by the sheriff or other officer; and upon the trial of any indictment in cases where the defendant is entitled to twenty peremptory challenges, the attorney general or prosecutor of the pleas shall be entitled to challenge peremptorily, and without assigning any cause, twelve of the jurors returned for the trial of such indictment, and upon the trial of any indictment for which a struck or foreign jury shall be summoned and returned, five peremptory challenges each shall be allowed to the defendant and to the state."

In the *Moschell case* (24 Vr., 498), Mr. Justice Magie says:

"Comparing the language of section 71 of the Criminal Procedure Act and section 40 of the Jury Act, a plain distinction appears to be made. By the former section, peremptory challenges are given to every person indicted for certain crimes. This has been construed at the Oyer, in several instances, to permit the prescribed number of peremptory challenges to be made by each defendant. That construction accords with the provisions of the com-

mon law as altered by 22 Hen. VIII., c. 14, sec. 7; 2 Hale, P. C. 268; Bac. Abr., tit. 'Juries' C. By the other section the privilege of peremptory challenge is given, not to every person indicted, but to the defendant or defendants. With respect, therefore, to the minor crimes, the privilege is not accorded to each defendant, but to all of them, if more than one. This construction has also been given in the Oyer, and plainly ought to be approved.

"Since, therefore, the crime charged in this indictment is not within the provisions of section 71 of the Criminal Procedure Act, the court below rightly held that the plaintiffs in error were collectively, and not severally, entitled to peremptorily challenge the number prescribed by law."

The crime charged in the indictment at bar is within the provisions of Section 80, formerly Section 71, of the Criminal Procedure Act, and hence the situation is different from that which led to the decision in *Moschell* v. *The State, supra,* as well as in *State* v. *Rachman,* 68 N. J. L., 120; and *State* v. *McQueen,* 69 *Id.* 522. And instead, therefore, of being governed by the decision in *Moschell* v. *The State,* based upon the language "defendant or defendants," found in Section 40 of the Jury Act, and now in Section 81 of the Criminal Procedure Act, we must turn to the very different language of Section 80, which provides:

"That every person who shall be indicted for treason, murder, etc. * * * shall be admitted peremptorily to challenge twenty of the jury and no more."

And we believe it to have been universally held, both at common law, and in this State, notwithstanding the decisions just referred to, that persons indicted for the crimes within the provisions of Section 80 (formerly 71) are still entitled sev-

erally to the number of challenges therein provided. Such was the statement of Judge Magie in the *Moschell case* as appears from the excerpt above quoted.

In *2 Hale's P. C.* at page 268, we find:

> "and if twenty men are indicted for the same offense, though by one indictment, yet every prisoner should be allowed his peremptory challenges of 35 persons."

The difference in the phraseology between the two sections was pointed out by Chief Justice Beasley in the trial of the *Freeholders of Warren County,* 2 N. J. L. Journal, 102.

The conclusion is inevitable, from the foregoing, that the limitation of the number of challenges specified in Section 81 of the Criminal Procedure Act, to all or any of "the defendants," arises from the peculiar language of that section, using the words "defendant or defendants"; but, inasmuch as that section only applies to cases where the person indicted does not have twenty peremptory challenges, the old rule still prevails with reference to the crimes mentioned in Section 80, of which that under review is one. The conclusion from the opinion in the *Moschell* case is inevitable, that had the crime been one within the provisions of Section 71 (now 80), the Court would have concluded that each defendant, when there is a struck jury, would have been entitled to five challenges. The rule might have been different had the Legislature in the provision for a struck or foreign jury, used the words, "defendant or defendants."

If this be so, then, of course, the same reasoning must apply when there is a foreign jury. The word "defendant" in the clause above quoted with reference to the number of challenges when there is a struck or foreign jury, is meant so far as the crimes mentioned in Section 80 are concerned, to apply to and be the equivalent of the "every per-

statutory language "the defendant".

People v. *Werner*, 110 *Mich.* 248.

State v. *Durein*, 29 *Kan.* 688 (Brewer, J.).

U. S. v. *Merchant*, 12 *Wheat.* 480.

Cruce v. *State*, 59 *Ga.* 83.

son" referred to in Section 80. Note that when Section 81 refers to the situation where there are to be allowed twenty peremptory challenges to the defense, it speaks of "the defendant," just as it does in the clause with reference to a struck or foreign jury. The language is:

> "And upon the trial of any indictment in cases where *the defendant* is entitled to twenty peremptory challenges, the attorney general or prosecutor of the pleas, shall be entitled to challenge peremptorily, and without assigning any cause, twelve of the jurors returned for the trial of such indictment."

It is perfectly obvious that the word "defendant" there is the equivalent of the words "every person" in Section 80, and we must attribute a similar meaning to the words "the defendant" in the very next clause, applying to a struck or foreign jury. Hence, we conclude that the learned trial judge was in error in confining us to collectively but five peremptory challenges.

It is true, and may be urged, that we did not exhaust our five challenges, and that hence we cannot review this action. While technically we have no exception, and hence are entitled to no assignment of error on the point, yet the case is here on the whole record, and the third cause for reversal distinctly raises the point (p. 1259).

This Court can realize the predicament the defendants found themselves in at the time of the selection of the jury. They realized the fact that the trial judge might not see the distinction herein made with reference to the number of challenges allowable, and had to know in advance how many challenges they would be allowed. There would naturally be some of the *talesmen* whom they would feel they could not afford to have under any conditions, and they could not risk exhausting their challenges, when, under the ruling, they

might find themselves confronted with jurymen whose presence on the trial they could not brook. Surely it is for just such situations as this that the beneficent provisions of Section 136 exist, and this Court, if satisfied that an injustice was done the defendants, will apply these provisions to the situation.

VI.

THE TRIAL JUDGE ERRED IN EXCLUDING TESTIMONY DESCRIPTIVE OF THE CONDUCT, DEMEANOR AND PROCEEDINGS OF THE STRIKERS ANTERIOR TO THE DAY OF THE HOMICIDE.

The counsel for the defendants felt at the trial, that it was very important to present to the jury just what had been the conduct and demeanor of the strikers at both the Williams & Clark and the Liebig plants (both of which were under the control of the American Agricultural Chemical Company and, therefore, under one management and subject to the same strike) for a period of, say, two weeks anterior to the day when the shooting occurred. It was thought, and it is now believed, that the course of conduct of the deputies on the day of the shooting could not help but have been influenced by such previous conduct; and that the propriety or impropriety of the deputies in emerging from the factory, some of them with firearms, would depend largely upon what they, from the past conduct of the strikers, as well as their present demeanor, had reason to believe they proposed to do.

The subject was presented from several angles, both by offers to prove and by specific questions, all of which were consistently and persistently overruled, the trial judge concluding that anything that transpired anterior to the day of the

shooting was irrelevant. As the shooting occurred about eight o'clock in the morning of the 19th of January, and the mob of strikers had only been in the neighborhood of the Williams & Clark plant for about an hour anterior thereto, it is plain that the ruling of the trial judge confined the matter to a very narrow range, and we were thereby prevented from showing any shooting or violence on the part of the strikers earlier in the history of the strike, any threats or suggestions of violence preparatory to this particular raid, or any other course of conduct on the part of the same strikers that might have credibly persuaded the deputies that the mob, as it approached the factory on the morning of the 19th of January, were prepared and intended, if necessary, to destroy life and property.

As this matter is of great importance, we will first quote the efforts that were made, and then refer to the specific questions that were overruled. The superintendent of the Liebig Works, Mr. Waring, was on the stand, and the Court had, in response to certain questions designed to elicit information as to the character of the strike and the disorder that prevailed anterior to the time that the sheriff was appealed to, ruled (page 725, line 8) "All that I propose to overrule and exclude, everything that happened before the deputies got there." Thereupon defendants' counsel stated:

> "*Mr. McCarter.* I offer to prove by this witness what occurred in the way of violence and disorder, and attempted destruction of property and injury to life, which prevailed upon him, as an officer of the Agricultural Company, to seek protection from both the local authorities in Roosevelt, and ultimately from the sheriff of the county, because of the riotous character of the proceedings that this very same crowd of men who were in front of

their plant on the morning of the 19th of January.

The Court. Before the deputies arrived there?

Mr. McCarter. Yes, sir.

The Court. That offer I overrule. And you may take an exception."

On page 729 appears the following:

"*By Mr. McCarter.*

Q Now, Mr. Waring, following the rulings of the Court, I will not ask you the question with regard to what transpired anterior to the appointment by the county of the persons of the deputies. Will you tell us what troubles you experienced at your Liebig plant the day before the 19th?

Mr. Wescott. I object.

The Court. I overrule that. At the Liebig plant? I do not understand these defendants were there.

Mr. McCarter. The defendants were not there, no, your Honor, but the Liebig plant is the same management, the same concern exactly as the Williams & Clark's, and I propose to show that the same strikers, on the morning before the 19th, shot at a man in front of Liebig's, that they returned there on the morning of the 19th, on the arrival of the seven o'clock train, and created disorder, and that they then marched, as already partially appears, from the Liebig plant to the Williams & Clark plant, arriving there at the eight o'clock train, when the occurrences in question occurred, and that before they reached the Williams & Clark plant, the fact of the trouble that had taken place at the Liebig plant was telephoned to the Williams & Clark plant and brought to the notice of the deputies.

The Court. You may prove what happened that morning. Not what happened the day before.

Mr. McCarter. If the strikers had shot at the people in connection with our plant the day before?

The Court. I have ruled and you may take an exception.

Mr. McCarter. Yes, sir; I take an exception respectfully. I offer to show that on the day before the occurrence in question a mob of strikers, many of the same who were in front of the Williams & Clark plant on the 19th, in front of the Liebig plant, belonging to the defendants, the American Agricultural Chemical Company, created great disorder, broke glass of buildings, and shot at a man who was supposed to be, and was in fact connected with the Liebig plant.

The Court. That I overrule.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge."

As appears on page 731, counsel further stated:

"*Mr. McCarter.* I offer to prove, after the arrival of the deputies, which I think was on the 4th of January, and for practically all of the intermediate period between that and the 19th, a crowd of strikers from the Williams & Clark and Liebig plants, owned and controlled by the American Agricultural Chemical Company, frequently surrounded the plant of Liebig's and of Williams & Clark, that they fired stones and broke windows in the plant, that they charged the gate, that they entered with force, and by force took workmen out who were working during the strike, of the Williams & Clark plant, and that they surreptitiously sought to enter the plant at night, with what purpose we do not know, and in a word, to indicate the fact that during this entire period of ten days or two weeks anterior to the occurrences in question there was a state

of continuous disorder by this mob, against these two plants. I offer to show that by this witness.

The Court. To show that all by this witness?

Mr. McCarter. Yes, sir.

The Court. I overrule that for the present. There is nothing in the case, so far as I can see, that will justify that proof. Now, if it develops before you finish your case, and you think it is necessary, you may renew your offer. For the present I overrule it.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Mr. McCarter. I overlooked when your Honor limited me to. Was it the day before the 18th?

The Court. I limit you to the 19th, the day this thing happened."

Earlier in the trial, the State's witness, Ganssucs, was being cross-examined and defendants' counsel designed to show that the witness was one of a number of strikers who met at a hall the previous evening and participated in the passing of a resolution to come on the morning of the shooting to the Williams & Clark plant for the purpose of committing an unlawful act, and the inquiry was overruled (page 346). Again at pages 622 and 623, Police Officer Donovan was not allowed to be cross-examined with regard to the conduct of the strikers and with regard to revolvers that they carried during the two weeks anterior to the 19th of January. Again defendants' witness, Moore, an employee of the company at the Liebig Works (page 793), was prevented from showing what the strikers had done in the way of disorder and injury anterior to the morning of the 19th when he arrived on a train for the purpose of

going to work. His testimony was therefore wholly confined to the disorder on the morning of the 19th, when he saw the great number of strikers around there. Whereupon (page 803), upon re-direct examination, he was asked "if anything had occurred with you before in the way calculated to make you alarmed at the strikers?" and objection being made, the defence (page 804) offered to show by the witness that he had been assaulted upon arriving the day before by a striker and roughly handled and had to seek police protection from one of these deputies, all of which was overruled. Again defendants' witness, Farley, (page 810) was asked whether on the 18th of January, he saw any of the strikers fire at the deputies, and that question was overruled as well as the following (page 810):

> "Q I will ask another question which you must not answer, Mr. Farley, until the Court rules on it. Did you have any trouble coming into the plant on the 18th, and when the seven o'clock train came in on the 18th, the day before the occurrence, immediately before this Court, did you know whether any man who arrived on the train at seven and eight o'clock were fired upon by strikers?"

Again the defendant Bavier was asked, but not permitted to answer the question (page 839) "how long before the 19th had a crowd congregated, if at all, in and about that station," and this, too, notwithstanding that the fact that over our objection the witness had been permitted (pages 858 and 859) to state in response to an inquiry when he received the ammunition that he carried, that it was somewheres around the 8th or 9th. "I was up there a couple of days when I got it." Again the defence was not permitted to show by its witness, DeRosa (page 913), that on the evening before the 19th of January, a meeting of the strikers

was held at which an order was given out that the strikers should proceed next morning to the Williams & Clark plant, and create not only the disturbances that were before shown, but the further other acts that were planned. See also pages 838-9.

Exception was duly taken to the action of the trial judge in each of these instances and error is assigned thereon.

We cannot but think that it was of the utmost importance to the defendants to have been permitted to show what the court in the foregoing instances refused to allow them to prove. It must be remembered that it is not pretended that anyone of the defendants fired the shot that killed the deceased. The theory upon which the case was presented and left to the jury, was as charged by the court (page 1212, line 38).

> "I charge you as the law that if you find that this deceased was killed by a body of men, of which these defendants were a part, who went out from that factory gate with a purpose to commit an unlawful act, and with the purpose of standing together and aiding and abetting one another in the carrying out of that act, and this man was killed by some one of the party when they were all there assisting in the carrying out of this purpose, they are all criminally liable, and it does not make any difference whether the shot was fired by one of these defendants, or some other member of that same party with whom you may find they were joined. You see otherwise it would be very difficult to enforce the law. If a body of men could gather together, of sufficient size to prevent the identity of the person who committed the act, and by arrangement some one of the party was to shoot and kill a man, and unless you could identify the person who fired the shot, you never could

convict anybody of that crime. So, as I have said, if they started out together with a purpose among themselves to do an unlawful act, to stand by and abet one another in carrying it out, and in carrying out that unlawful purpose, some man was killed, all are equally liable. You may also take into consideration the manner in which they gathered together, all surrounding circumstances, because it is not necessary to prove an oral combination, or a written agreement to do this thing. The jury may find the common purpose of carrying out this unlawful act, with the intention to stand by and aid one another in doing it, from what they do."

Remembering that there were about forty-five deputies in all that emerged from the plant, twenty-six of whom were indicted, of whom only ten were being tried, surely therefore an illegal criminal intent may not be imputed to everyone of the party by reason of the fact, if it were a fact, that they emerged from the plant in more or less of a crowd, when all evidence as to what had previously occurred, to the knowledge of the defendants, as indicative of the purpose and intent of the strikers at the time of the shooting, was excluded. Several of the defendants specifically swore that they went out to assist and protect employees who arrived on the eight o'clock train. (See pages 883, 990, 1016, 1038 and 1108). Would not their culpability in thus going armed, as some of them admit they did, depend among other things upon how the same body of strikers had demeaned themselves the day before, upon the arrival of the same train, and similar protection was being given to employees? And would not the expectation and demeanor of those of the deputies whose purpose was to disperse the mob and assist in removing the obstruction on the track, be largely influenced,

not only in the character of weapons that they carried with them, but in their own conduct as they approached the mob by its previous conduct, the threats they had made, and the purpose they had expressed? If the conduct of the same body of strikers on the day before, or days preceding, upon the arrival of the eight o'clock train, had been riotous, if they had thrown stones and used firearms, and if at a meeting on the evening immediately preceding the 19th, they had been directed to go even further on the morning of the 19th, and the mob appeared as it did, armed with sticks, clubs, stones and firearms, would not the common purpose of the forty-five deputies (which under the theory of the case is imputable to each one of the defendants) have been influenced thereby, and their conduct governed accordingly. What mystic charm was there about the hour of twelve midnight on the 18th of January? Upon what proper hypothesis did the trial judge permit evidence of what transpired after that hour, and exclude evidence of what transpired during the early hours of the evening of the day before, or even the time anterior thereto? The defendants intended to show a gradually increasing state of desperation on the part of the strikers as they found their previous efforts unavailable. Knowledge of this was brought home to the deputies, and they not only had the right, but it was their duty to both protect employees coming to the mill and to disperse the assembled mob. The manner in which they should set about to perform their duty depended largely upon their past experience with, and the prior conduct of the strikers. If the strikers had previously manifested such recklessness as that they did not hesitate to destroy property and even life, and their instructions and threats on the morning of the 19th were to go further than they

had yet gone—a course that in their state of exasperation would be perfectly natural, and their demeanor on the morning in question by the display and use of clubs, firearms and other weapons manifested a present intention to continue their past illegal and disorderly acts, even to the extent of destroying property and attacking life, then the point of view of forty-five deputies would necessarily be different than if there had been no antecedent history.

This whole subject received intelligent consideration in the case of *Commonwealth* v. *Martin,* 9 Kulp. (Luzerne Legal Register Reports) 69, wherein the situation was very much the same as in the case at bar.

The learned judge held:

> "The question whether the purpose of the sheriff and his posse on the 10th of September, 1897, was a criminal one cannot be fairly answered without a comprehensive review of all the facts and occurrences which led up to and culminated in the final volley fired by the deputies on that day and which resulted in the death of the person named in the indictment. The events of the week preceding the tenth are so knit together in the fabric of the case that they cannot be considered as entirely independent and separate transactions and must be regarded as constituting together the history of the case."

Commonwealth v. *Campbell,* 7 Allen (Mass.) 541. This case was the indictment of a rioter for the murder of one of his fellow rioters who was killed by one of the soldiers engaged in suppressing the riot. Evidence of riotous acts by the defendant in other places, and earlier in the day, were admitted upon the foundation first being laid by proof that those acts were so connected with the acts in which he was engaged at the time the

deceased was killed that they might properly be deemed to form part of one and the same transaction.

See also—

Petry v. Cartright, 70 S. W. 297 (Ky.), which was a civil action for cause of death brought against a peace officer. What occurred before the killing, including statements, was admitted as part of the *res gestae.*

VII.

THE COURT ERRED IN CHARGING, UNDER THE CIRCUMSTANCES, THAT ALL OF THE DEFENDANTS COULD BE HELD GUILTY, ALTHOUGH IT IS IMPOSSIBLE TO IDENTIFY THE MAN WHO ACTUALLY FIRED THE FATAL SHOT.

We will not here repeat the portion of the charge bearing upon this point. It will be found on pages 1212 (at the bottom), 1213 and 1214, and substantially directed that if the jury concluded that the deceased was killed by a body of men of whom the defendants were a part, who went out from the factory with a purpose to commit an unlawful act, and of standing together in carrying out that act, it makes no difference whether the shot was fired by one of these defendants, or some other member of the party with whom the jury may conclude the defendants were joined.

We must now turn to that portion of the charge at the bottom of page 1220, to ascertain what was "an unlawful act," the previous determination to do which, made each member of the forty-five who emerged, vicariously responsible for the acts of each other. The court said (p. 1220, l. 27):

> "While there is such a thing as a body of citizens getting together and suppressing a

riot, it is always much wiser that such body of citizens should act under the direction of some officer, the sheriff, or a constable, or some peace officer. There are times, of course, when the assembly reaches such a point of riotous conduct, and life or property is in danger, that the citizens may interfere and by force undertake to suppress a riot; but that condition must exist and it is for you to say whether any such condition existed that morning, on the 19th of January, as would justify the firing of a volley into that crowd, if it was done."

The charge then undertakes to define the distinctions between murder in the first degree, murder in the second degree and manslaughter, stating as to the latter (p. 1214, l. 35).

"Manslaughter is an act done in the excitement of passion. It must appear that the killing resulted from passion, or heat of blood, produced by reasonable provocation. It is not every provocation that will reduce a killing from murder to manslaughter. The provocation must be of such a character, and so close upon the act of killing, that for the moment the person would be considered as not master of his own understanding. The provocation must be reasonable. Whether sufficient time elapsed between the provocation given, and the act of killing, for the accused to subdue or control passions, are questions of fact to be determined by the jury."

Assuming the foregoing be a correct definition of manslaughter (and, of course, we must so assume) we contend that a fundamental error was committed in the theory that should the jury conclude that the situation did not disclose murder in the first degree (and this the trial judge believed, p. 1214, l. 32), nor murder in the second degree, which evidently the jury by their verdict

concluded, they could nevertheless find all of the defendants guilty of manslaughter. In fact, the trial judge particularly invited such a determination by his language (p. 1221, l. 7):

> "I cannot see how you can escape finding, from this evidence, these defendants guilty of reckless shooting."

The only support for the theory upon which the defendants can be held responsible for the manslaughter of the deceased, would be upon the idea that the jury believed that the forty-five deputies emerged in a body for the purpose of doing an unlawful act, and hence that all would be responsible for any act resulting from the execution of the common design, whether specifically preconceived by all or not.

This is the principle of *Roessel* v. *The State,* 33 Vr. 216. But what is an unlawful act? The circumstances surrounding the death of this man were certainly peculiar, and the relative rights of the defendants as sheriff's assistants, and the mob, were such as the jury needed to be instructed about. The defendants' second to fifth requests (p. 1205) stated the view their counsel took of the situation, and these the trial judge refused to charge. The trial judge disagreed with defendants' counsel as to what would and would not be lawful conduct on the part of the defendants in emerging from the factory. Of course, therefore, the jury could not be left uninstructed, and hence it was necessary for the judge to define what was unlawful. Now, all the enlightenment that the jury received upon this subject is found in the excerpt above quoted, in which, after reciting that there is such a thing as a body of citizens going forth under the control of the sheriff, etc., for the purpose of suppressing a riot, adds:

> "There are times, of course, when the assembly reaches such a point of riotous con-

duct, and life or property is in danger, that the citizens may interfere and by force undertake to suppress a riot; but that condition must exist, *and it is for you to say whether any such condition existed that morning, on the nineteenth of January, as would justify the firing of a volley into that crowd, if it was done.*''

That is to say, the jury were instructed that they must believe, in order that the defendants' conduct should have been lawful, that the facts and circumstances were sufficient to have justified them in firing a volley into the crowd. There is no basis whatever for this idea. It is, in deference to the statement of the learned trial judge, absurd to suppose that no other facts and circumstances could make the emergence from the factory, and the use of firearms by the defendants, lawful. Nevertheless, by reason of this statement the jury were permitted to infer that the existence of any other state of affairs in the minds of the forty-five deputies when they emerged from the factory with a common purpose, made their action an unlawful act, and hence that each was responsible for the act of the other, although such act was not contemplated or anticipated by or commanded by any one, and was, indeed, the result of the sudden passion of one of them.

We have elsewhere considered the error of confining the propriety of the deputies' conduct in shooting, to the narrow bounds of a situation which justified the firing of a volley into the crowd. (See p. — of this brief). The point we now desire to accentuate, however, is the impropriety and impossibility, under the definition of manslaughter contained in this charge, in directing that the defendants could all be convicted thereof from the fact, if it were a fact, that they were a part of the crowd that emerged to do an unlawful act.

The theory which holds one of a crowd responsible for the acts of others therein is the common purpose attributable to all, or, as stated by a text writer:

> "Although if many come upon an unlawful design and one of the company killed the adverse party in pursuance of that design, all are principals; yet, if many come upon a lawful account and one of the company kill another of an adverse party without any particular abetment of the rest of this act of homicide, they are not all guilty that are of the company, but only those that gave the stroke or actually abetted them to do it."

The difficulty is to find any justification whatever for the view that these defendants could be criminally responsible for the manslaughter of some unidentified one of their thirty-five associates, arising from his sudden heat of passion.

In 1 *Russell on Crimes,* *p. 59, we find:

> "In murder and felonies in general there may be accessories, except only in those offenses which by judgment of law are sudden and unpremediated; such are some cases of manslaughter and the like where there cannot be any accessories before the fact."

In 4 *Blackstone's Comm.,* *p. 36, we find:

> "In petit treason, murder and offences with or without benefit of clergy, there may be accessories; except only in those offences which by judgment of law are sudden and unpremeditated, as manslaughter and the like, which, therefore, cannot have any accessories before the fact."

In *Hale's Pl. Cr.,* 615, we find:

> "Those offences which in the construction of law are sudden and unpremeditated cannot have any accessories before as * * * killing a man *per infortunium, se defendendo,* or manslaughter.

"And, therefore, if A be indicted of murder and B as accessory before, if the jury find A guilty only of manslaughter there should be no inquiry of B, but he should be forthwith discharged, for bare homicide is always sudden, for if it were premeditated, it had been murder and not barely homicide."

See also:

Bibithe's Case, 4 Coke's Reports, 43.

Remember the limitation of the definition of manslaughter contained in the charge, and that it was confined to the taking of human life in the heat of passion. The jury could well have concluded in this case that the deceased was killed by one of the forty-five deputies who became suddenly incensed. In which event, they were justified, under the judge's charge, in holding the defendants guilty of manslaughter. There can be no common purpose or design that one of the deputies should lose his temper and kill in the heat of passion then existing.

In this connection it is very important that the court should have its attention called to certain evidence that was admitted against our objection.

The State's witness Ryder (pp. 314-316) described the general scene and how the strikers ran away and were pursued by the deputies, and (p. 317) how a deputy stood over a particular unidentified man and shot him with a riot gun. It is not pretended that the man whom Ryder describes was identified as one of the defendants, and we think this testimony was illegally received (p. 1237, assignment 23rd). So on page 494 the State's witness Poth was permitted to show, against our objection, that after the train went away the deputies "threw everybody into the water." This also, we claim, was erroneously admitted. (P. 1238, assignment 30).

So the State's witness Jaeger (pp. 686-687) was permitted to describe how an unidentified deputy in defiance of a request not to shoot, did fire at some of the strikers behind the shanty. This is also claimed to have been erroneously admitted. (P. 1241, assignment 49th).

Bear in mind that the case is entirely silent as to when or by whom the deceased was shot, and in view of the fact that he had a wound in the front of his leg, as well as in his back (pp. 194-195) it may well be that he was shot by the strikers in the general *melee* that there existed. Indeed, when one remembers that no one testifies where Tessitore was at the time he was shot, it is a far cry to conclude beyond a reasonable doubt that he was killed by some one of the deputies, or worse yet, some one of the defendants. But passing that, in view of the testimony just quoted, could not the jury have reasonably concluded, under the charge, that he was one of the victims referred to therein, and that notwithstanding the proof that the unidentified deputies therein referred to were plainly in individual quarrels, acting in the heat of passion, and that all of the ten defendants were guilty of manslaughter?

Particular attention in this connection is called to the evidence of Rick (pp. 894-895-896).

The principle we are here contending for is well exemplified in the case of *State* v. *Carson* (Supreme Court of Kentucky) 15 S. E. Rep. 588. There the defendants were jointly indicted for the murder of one Jenkins. The exact circumstances under which the deceased was killed were not known, but suspicion was cast upon the defendants jointly from the fact that they had been seen with the deceased a short time prior to his death.

Of course, other circumstances were produced. At the trial the judge was requested to charge:

"That even if the jury was satisfied that the deceased came to his death at the hands of one or the other of the defendants, yet they must, in order to convict, be satisfied as to which one did cause the death of the deceased."

This the Judge declined to do, but did charge:

"Now I am asked to charge you that you must find out which one killed the deceased; but I charge you that if both were present and one did the killing and the other assisted, aided, counseled, or approved, they are both equally guilty."

The opinion, in reviewing the charge, says:

"It seems to us that this charge was correct, so far as it went, but that it did not go far enough. It ignored the view that one of the defendants might have done the act without the concurrence or aid of the other. If there had been proof of a conspiracy on the part of the defendants to inveigle the deceased into the water, and then kill him, and he had been killed by one of them, in the prosecution of that common purpose, then, surely, the act of one would have been the act of both, and they would 'be equally guilty.' But the meeting being casual, without concert or combination, if one of the defendants, upon sudden quarrel or other cause, without the aid or support of the other, took the life of the deceased, he alone who did the act would be responsible, and the parties were entitled to have the jury so charged. 'One who is present, aiding and abetting others in a common purpose, is responsible for the act of any one of the party, provided the act was in pursuance or incidental to such purpose. *Frank* v. *State*, 27 Ala. 37. But, if the act committed has no connection with the common object, the

party committing it is alone responsible for the consequences. When parties combine to commit an offense one who did not consent and was not privy to the fact is not responsible. *4 Amer. & Eng. Enc. Law, 62.*"

Ever since the abolition of the distinction in the criminal law of this State between misdemeanors and felonies, the common law distinction between principals and accessories has also disappeared, and all who aid, abet or participate are now principals, and equally guilty. *State* v. *Spence,* 52 Vr., 265; *State* v. *Warady,* 49 Id. 687.

Nor does the fact that the jury were justified in believing, from the evidence of Conlon, that all of the defendants were present, justify the inference that all participated in the alleged act of manslaughter.

In *State* v. *Fox,* 41 Vr., 354, we find:

"Mere presence at the scene of the perpetration of a crime does not render a person a *particeps criminis.* To constitute him a party to the criminal act there must be not only presence upon the scene, but an actual participation—an aiding and abetting in the crime committed."

If then we be correct in the claim that there was no possibility, under the peculiar circumstances of this case, of holding the defendants co-principals or accessories with a deputy who the jury may have concluded, shot the deceased in the heat of passion, then, of course, it was erroneous for the court to have led the jury to believe that all of the defendants could be found guilty of manslaughter. *State* v. *Biengo,* 75 N. J. L. 284; same case on appeal, 46 Vr. 284; 50 Id. 523; *State* v. *Pulley,* 53 Vr., 579; *State* v. *Bullock,* 65 N. J. L. 557.

In *Dorsey* v. *Commonwealth* (Court of Appeals of Ky.), 17 S. W. Rep. 183, Dorsey was being tried for the murder of one Burnett. The facts disclosed that both Dorsey and Jackson, while together, had gotten into a quarrel with the deceased, and that Jackson had finally shot and killed Burnett. Jackson was convicted of murder, and in the trial of Dorsey there was some evidence tending to show an agreement between Dorsey and Jackson to do the deceased an injury, and that they had hunted him up for this purpose. The court charged the jury to the effect that if Dorsey was present and had confederated with Jackson to make such an attack upon the deceased as would endanger his life, or was aware of any malice on Jackson's part, and did himself wilfully and maliciously aid and encourage Jackson, then Dorsey could be found guilty of wilful murder. If, on the other hand, the jury were of the belief that Dorsey, without knowledge of Jackson's malice, and not in pursuance of a previous agreement, was present, aiding, abetting or encouraging Jackson in the killing of Burnett, then Dorsey could be found guilty of manslaughter. Concerning this view the Court, in reversing the judgment, concluded:

> "No other instruction was given which made the degree of the offense of the accused, if he had committed one, turn upon the motive with which he acted. If he acted from malice, or if he knew of malice upon the part of Jackson, and acted by reason of it, in aiding and commission of the offense, then he is equally guilty with Jackson; but, although he may have known of malice upon Jackson's part, yet if, upon a sudden quarrel, he acted from sudden passion, and not in pursuance of an agreement to do harm to the deceased, then he is at most only guilty of manslaughter. Although he may have been aware of malice

upon the part of Jackson, yet, unless he acted with the motive of carrying it out, or from an agreement with Jackson to do the deceased harm, and not from sudden heat and passion, he would not be guilty of murder. This may be what the able judge below intended by the instruction; but the second clause of it is so worded that the jury may, and doubtless did, believe that if the accused merely knew of malice upon the part of Jackson towards the deceased then they could not find the accused guilty of manslaughter, although he may have acted in sudden heat and passion, and not in furtherance of any previously agreed plan to injure the deceased. In other words, that the degree of guilt of the accused depended upon his mere knowledge of malice upon the part of Jackson. This is not the law; and, while the trial judge doubtless did not intend to so tell the jury, yet the instruction is so worded that they may well have so understood it. Where life or liberty is involved, we are unwilling to conjecture that they understood it otherwise."

VIII.

THE TRIAL JUDGE MISDIRECTED THE JURY IN HIS CHARGE WITH REFERENCE TO THE LAW OF SELF DEFENSE.

The subject of self defense as charged is treated on page 1221. After showing that some of the defendants set up this defense the trial judge charged the jury as follows: (P. 1221, l. 20):

"The burden of proof is on the accused to show facts and circumstances necessary to establish the defense of self defense. A man may protect himself, even to the extent of taking the life of his adversary, when that act is, or reasonably appears to be necessary to preserve his own life, or to protect himself

from a serious bodily harm. Whether the necessity for taking a life exists in a given case, must be determined from the situation of the accused at the time, and that is a jury question. *The accused cannot make his own judgment of the necessity of slaying the deceased his justification,* and whether his situation was such as to warrant resort to such means to protect himself from a danger actual or apprehended on reasonable grounds, and whether before the fatal wound was given the accused had done everything exacted by the law to avoid taking life, involves the determination of questions of fact."

We contend that involved in the foregoing excerpt, which is practically all that the trial judge charged upon the subject of self defense, are two erroneous conceptions.

(a) *With regard to the burden of proof.*

The jury could not help but conclude from this portion of the charge that when self defense is set up the burden is on the accused, whereas, of course, in this State, the burden of proof in a criminal case never shifts.

In this connection note the difference between the language of the charge with reference to the defense of an alibi and self defense. (P. 1219):

"The assertion of an alibi in no wise changes the presumption of innocence or relieves the State of its burden of proving the guilt of the defendant beyond a reasonable doubt. The burden of proving such guilt always remains on the State, and never shifts. In other words, if the evidence of this alibi is not sufficient to quite satisfy you of its truth, if, nevertheless, it raises in your mind a reasonable doubt of the defendant's guilt, either of that, or because of that, and the other evidence in the case, such defendant would be entitled to the benefit of that doubt."

That is a correct expression of the law, and if a similar charge had been made with reference to self defense we could not complain. But here, particularly in view of the care with which the jury were instructed with regard to the defense of an alibi, the jury must have concluded that by reason of the distinction made, the burden was not upon the State so far as self defense is concerned.

In *State* v. *Jones,* 42 Vr., 543, 547, this Court says:

> "On the trial of an indictment for murder where the justification is self defense, it is entirely proper to instruct the jury that the burden is on the accused of proving to the satisfaction of the jury a situation and circumstances under which the right of self defense might be lawfully exercised, *provided they are also instructed that the accused is entitled to the benefit of the reasonable doubt upon the whole case.*"

Now this qualification is exactly what the judge omitted to add to his charge with reference to self defense, in the case at bar. He treats the subject of the burden of proof on but two occasions, first, with reference to the alibi, as above quoted, where he makes the restriction, and, second, with reference to self defense where he omits it.

See also:

Brown v. *State,* 33 Vr. 666.

This is particularly significant in view of the Court's refusal to charge the first and seventh requests (pp. 1205-1206), laying down the general rule with reference to reasonable doubt. The seventh request is particularly significant in this connection. It reads:

> "In order to convict the defendants, or any one of them, the jury must be convinced beyond a reasonable doubt of their guilt, not

only on the whole phase of the case, but if there is such a doubt in existence, on any material feature of this case, then such doubt must be resolved in favor of the defendant or defendants."

(b). *There was also error in failing to dwell upon the right of the defendants to rely upon their apparent danger.*

The language is:

"A man may protect himself, even to the extent of taking the life of his adversary, *when that act is, or reasonably appears to be, necessary* to preserve his own life, or to protect himself from a serious bodily harm. Whether the necessity for taking a life exists in the given case must be determined from the situation of the accused at the time, and that is a jury question."

If the charge had stopped there, there could have been no complaint. The trouble is it then continues:

"The accused cannot make his own judgment of the necessity of slaying the deceased his justification * * *."

This last clause robs the previous sentence of the true limitation of the rule, which makes the appearance of danger, as well as danger itself, an incident available in the plea of self defense. This is the distinction that is made plainly by this court in the case of *State* v. *Bonofiglio,* 38 Vr., 239 and *State* v. *Jones,* 42 Vr., 543.

If the law as charged by the learned trial judge is correct, then the doctrine as laid down in *State* v. *Bonofiglio, supra,* is entirely dissipated. It is, indeed, a person's honest belief of a situation, which justifies him to repel an assault as he, under certain conditions, perhaps extreme, sees them. His justification is based upon such con-

ditions, even though they be erroneous, and not upon the fact as it may afterward turn out to be.

The situation is very much the same as that in *State* v. *Lang,* 87 N. J. L., 508. The evidence of the defendant Mullen in this connection is very important. He testified (pp. 924-5 and 948-9), that he was assaulted and hit by stones thrown by some of the strikers. He further swore that he had no gun or firearms (*ibid.*). The jury might well have disbelieved his statement that he had no gun, and concluded that he fired the fatal shot to protect himself from the stones that were being thrown at him, one of which hit him and injured his leg, after the shooting in his direction had ceased (p. 949). The same thing is true of the defendant Wallace, who testifies on page 992, that he was attacked with stones, bricks and sticks, and was hit with a missile and that he fired three shots in the air because he was in danger of his life. In such a situation he was entitled to the further charge with reference, not only to there being danger, *but the appearance of danger,* and the situation is not, therefore, within the exception to the rule in *State* v. *Bonofiglio, supra,* pointed out in *State* v. *Jones,* 42 Vr. 543, and *State* v. *Melillo,* 48 Vr. 505.

The plea of self-defense was not set up by all of the defendants (Mullen, p. 925; McLaughlin, p. 964; Williams, p. 1039), and, of course, if the deceased was shot by one of the defendants in the improper exercise of the alleged right of self defense, the others could not be held liable therefor, unless all the deputies are shown to have emerged with a common unlawful purpose in view, and the jury were properly instructed as to what would constitute, under the circumstances, an unlawful purpose, which, as we have seen, was not done.

IX.

THE TRIAL JUDGE MISDIRECTED THE JURY IN CONNECTION WITH THE RULE GOVERNING THE DEFENDANTS' EFFORTS TO SUPPRESS THE RIOT.

He charged them as follows (p. 1220):

> "There are times, of course, when the assembly reaches such a point of riotous conduct, and life or property is in danger, that the citizens may interfere and by force undertake to suppress a riot; but that condition must exist, and it is for you to say whether any such condition existed that morning, on the nineteenth day of January, as would justify the firing of a volley into that crowd, if it was done. That is what the state claims, and some of the defendants' witnesses say that this body of men fired a volley toward this crowd of men who were on the track. It is for you to say whether any such condition existed as justified such a resort to force as to take human life. And if not, then I cannot see how you can escape finding, from this evidence, these defendants guilty of reckless shooting."

After leaving the impression that it was always better for citizens to be accompanied by the sheriff in the suppression of a riot, for which there is no legal justification, he limits the right of the defendants in the case at hand, to a situation where the provocation was sufficient to have justified their firing a volley into the crowd. We had requested the judge, as already indicated in the second, third, fourth, fifth and sixth requests (pp. 1205-1206), to charge to the general effect that the defendants, if the jury believed that a riot was on hand, had the right to use all reasonable means to suppress it, to preserve peace, and protect life, and if the shooting occurred while they were so protecting life or endeavoring to suppress a riot,

or disperse an unlawful gathering, then the same was justifiable. All these requests were refused, and, as before stated, the subject confined to the language above given. Our criticism of this language is that it assumes in the first place that there was the slightest proof on the part of the defense that the defendants did fire a volley into or toward the crowd. The only witnesses who testified upon the subject (being those referred to by the judge in the above quotation), are Messrs. Deacon and Pyne. The former, after having shown on page 747 that the first shot did not come from the deputies, says (p. 748):

"Q Well, what happened after that?

A Immediately after the firing of those shots the men who had come from the plant raised their guns and fired a volley over the train.

Q What do you mean by fired a volley over the train?

A Well, it was almost a concerted bunch of shots, almost simultaneous, quite a number of them, but the weapons, as my attention was fixed on those men, was the raising of the weapons all up in the air. It was not fired low, but high. * * *

(P. 749, l. 18):

A After the first case, that first volley, I saw no firing except in one case, and that was not fired at a man.

Q What did you see in that case that you name?

A That was a man who ran alongside of the right hand side of the train, the opposite side, driving a bunch of the laborers in front of him. He fired, while I was watching him, two shots, but both of them were fired into the ground."

The latter, Pyne, also a witness for the defense (p. 763) was asked:

"Q Well, did the shooting that you heard at that time come from the deputies?

A No, sir; it did not.

Q And were your eyes fastened on the deputies at that time?

A My eyes were fastened on the deputies all the time; yes, sir. * * *

A And as the shots were fired from the front part of the train, those of the deputies who had riot guns fired up in the air. Some of those who had revolvers shot into the ground, and then they charged, and as they charged, I went over to the other side of the train to see what was happening on the right hand side."

It thus appears that there is no foundation whatever for the claim that the defendants fired a volley recklessly, or otherwise, into or toward the strikers, and the trial judge utterly misconceived the testimony in that regard.

This misstatement of the evidence is harmful error.

State v. *Smith and Bennett,* 12 Vr., 370;
State v. *Diamond,* 33 Id., 17; (pp. 1227, l. 22; 1247, l. 22).

Again, the jury were by the foregoing charge led to believe that the only situation in a riot that justifies its suppression, with firearms, is that which requires the firing of a volley. They were told that under certain circumstances, when life and property are in danger, that citizens may by force undertake to suppress a riot, but instead of then being directed that it was for them to determine whether that condition here existed, they were expressly told that it was for them to say whether any such condition existed at the time as *to justify the firing of a volley into the crowd,* a very much

narrower limitation than the law imposes. It is perfectly obvious that the force required to suppress a riot might involve the use, if you will, of firearms, and yet not justify the firing of a volley into the crowd. The defendants, although they had requested, were deprived, by this charge, of having the jury determine whether the facts and circumstances were such as to justify the use of firearms in another way than in a volley into the crowd. The fact is, as we have already shown, that they fired into the air, and the judge misconceiving that evidence, held that to be criminal; and concluded by saying that he did not see how the jury could escape finding the defendants guilty of reckless shooting (p. 1221, l. 9), thereby inviting the jury to find these defendants guilty of some crime described by him as "reckless shooting," if they fired into the air, or into the ground, and not at or into the crowd.

X.

THERE WAS ERROR IN THE REFUSAL OF THE COURT TO CHARGE THE DEFENDANTS' TWENTY-FOURTH REQUEST.

This reads as follows (p. 1210):

> "The defendants, as assistants to the sheriff, are free from the presumption of concert or combination which exists in the case of a mob or riotous assembly, and the mere proof, therefore, that the men walked together is not evidence of such concert as will hold an unidentified defendant responsible for the act of him, who actually fired the fatal shot."

The only portion of the charge that bears upon this phase of the case is found at the bottom of page 1218:

> "What conclusion are you to reach from all this evidence upon the bare fact of whether

these men went out from that factory in a body or if they went out, as these defendants say they did, singly? Because if they went out in a body armed, that is a circumstance from which you may infer that they were acting together in concert, with an intention to aid and abet each other."

We contend that we were entitled to have the jury charged as above requested. There is a marked distinction between the presumption arising from the banding together of a set of men who are strikers, or a mere mob, and those who are assembled, even though armed, for the purpose of preserving life and property. The presumption of a lawful purpose attaches to the one; of an unlawful purpose to the other. In the one case all are responsible for the acts of any; in the other, no such presumption attaches. The following authorities illustrate this distinction:

Delaney v. *Commonwealth,* 25 S. W., 830 (Ky.). Here the defendant killed one of the party who had kidnapped his brother. The defendant was one of a party who had started out to rescue his brother. They had armed themselves with deadly weapons. The trial judge's charge that if the defendant knew his brother was being kidnapped, he might devise some peaceable means to prevent his brother's capture was erroneous and harmful to the defendant, as the defendant was entitled to arm himself and use his arms to prevent the capture, and the instruction to the jury apparently made the act of arming himself inconsistent with peaceful means.

To the same effect is *Powers* v. *Commonwealth,* 61 S. W., 735 (Ky.): Here the defendant was indicted for the murder of Governor Gobel. He was one of the crowd who had assembled near the State House a military force armed with deadly

weapons. The Court below excluded evidence of the address by one member of the crowd to the crowd, offered by the defendant to show the peaceful purpose of the assembly. This exclusion was held error.

The worst that can be said of the defendants is that although their purpose was lawful, they knew that it would be opposed and that in suppressing the riot they would come in contact with a breach of the peace, but this is the case in every instance of an opposition to a riot.

See *Beatty* v. *Gilbanks,* 9 Q. B. D., 308.

Since the defendants were a lawful body, with a lawful purpose, and since no unlawful purpose can be presumed from the mere fact that some of them were to each others knowledge, armed with deadly weapons, then, even if the killing of the deceased by one of them is unjustifiable, no one of them can be held unless he be identified as the man who fired the fatal shot.

Riggs v. *State,* 3 Coldwell (Tenn.), 85: In this case the defendant was a private soldier, one of the squad, which, under an officer, went to a certain place where an unidentified member of the squad killed T. This killing was unjustifiable. The defendant was not identified as the accomplice. It was held that the defendant was not guilty as one of a mob would be. The defendant had to be where he was, and being there, all of his actions were lawful unless he actually did the killing, and that was not brought home to him.

State v. *Kirkpatrick,* 42 Fed., 689: The same ruling was made in this case in which the defendants were assistants of a United States revenue officer engaged in looking after evidence of illicit distilleries. It was held to be essential to identify him who actually fired the fatal shot.

Commonwealth v. *Martin*, 9 Kulp (Pa.), 69. In this case the court gave the following instructions to the jury:

"The sheriff may command every man he summons to bring his arms, and whether commanded or not, every man summoned on the sheriff's posse has the right to come armed."

"The sheriff and his posse are a lawful assemblage without such positive proof as shall satisfy the mind beyond a reasonable doubt that if they conspired and combined to do some unlawful act inconsistent with the acts which they were called upon to perform in a line of their duty."

"If any deputy wilfully, knowingly and maliciously continued the firing after the necessity for firing had ceased, and did, by such firing, kill Mike Ceslak, he may be found guilty under the indictment, but to convict any one the jury must be satisfied beyond a reasonable doubt:

"a. That some person did so fire and be able to identify the person.

"b. That he did it wilfully and maliciously, intending to kill.

"c. That Mike Ceslak was killed by such person.

"As testimony does not disclose the identity of any person who fired in the manner described, a conviction of any of the prisoners would not be warranted.

"Before any one of the prisoners can be convicted, the jury must be satisfied beyond a reasonable doubt.

"a. That some one of them had special malice towards the deceased, or general malice towards the whole body of strikers, and intended unlawfully to kill some one of them without caring which one.

"b. That such malicious disposed person did in fact fire and kill Mike Ceslak.

"c. That the evidence clearly identifies that particular person."

XI

APART FROM LEGAL ERROR THE DEFENDANTS WERE GREATLY INJURED BY OCCURRENCES DURING AND ANTERIOR TO THE TRIAL WHICH SHOULD PREVAIL UPON THE COURT TO GRANT A NEW TRIAL.

The deceased was killed in Middlesex County. The defendants—whatever they be called, whether they were assistants to the sheriffs, deputies or sworn guards—had for nearly three weeks been with their associates engaged in and protecting the property of the American Agricultural Chemical Company, and the lives of their employees, because of a strike that was in progress involving a large number of men and affecting not only them but their families. A feeling undoubtedly existed in favor of the strikers, and just as true is it that the attitude of the employers had its local approval and backers. The natural and legal place for the trial of the indictment was at the county seat, by a jury selected from the vicinage (24 Cyc. 99), and if the trial had been so conducted under the law, the defendants would have had as we contend, 500 challenges. The greatest excitement followed the incident of the shooting of the deceased. A legislative investigation was ordered and had. The friends and followers of organized labor were greatly aroused and the incident was looked upon by them as an instance of the aggression of capital and an abuse of its rights. Every labor union man instinctively allied himself with the strikers and the immediate issue in the minds of the people was widened into a clash between capital and labor, the partisanship for which extended as far as the rabid newspaper accounts circulated. The defendants supposing that they were a part of the administration of

justice and engaged in the preservation of peace and good order in Middlesex County, had co-operated with the Prosecutor in giving him full information with reference to what occurred, and when, to their surprise they heard that they themselves had been charged with the crime, voluntarily surrendered themselves at New Brunswick, only to find themselves charged with manslaughter and later indicted for murder. They knew the prejudice existing in the public mind against people whether they be guards, deputies or strike breakers, who interfere with laboring men conducting a strike, and they felt the importance of the selection of a fair and impartial jury, and they appreciated the privilege of having at least their full quota of challenges. In this situation, an application was made by the State to Mr. Justice Bergen, the Supreme Court Justice presiding at that circuit, for a foreign jury. It should be noted that this application did not occur until the Attorney-General took hold of the case and began to assist the Prosecutor's office. The petition upon which this application was based is found on page 32 and is founded wholly upon the idea that as the sheriff of Middlesex County had appointed the defendants his deputies, and as Justice Bergen had, in charging the Grand Jury, made use of certain expressions indicating that he believed such employment was unauthorized, the sheriff was an improper person to have participated in the drawing of the panel of petit jurors to try the defendants, and hence that a foreign jury should be in the discretion of the court, directed.

Notwithstanding the defendants' objection, Justice Bergen made an order for a foreign jury, and a motion was made to vacate it before the Supreme Court on the ground that he had no power as a single justice to make the order, but that the privilege appertained to the court itself. Where-

upon (page 56) an order was entered by the court vacating Justice Bergen's order. An application was then made to the Supreme Court, the Attorney General filing an affidavit as the basis therefor, printed at pages 74 to 85, in which the charge of Justice Bergen to the Grand Jury preceding the indictment of the defendants was quoted, with particular reference to the statements therein made regarding the right of the sheriff to employ deputies, the fact that a legislative investigation had been under way with quotations from the report of its proceedings, and the Attorney General concluded that "it is clear to me that a jury with which the sheriff had nothing directly or indirectly to do ought to try the defendants in the interests of impartial justice." Accompanying the affidavit of the Attorney General were affidavits of certain individuals mostly members of labor unions who gave varying views as to the status of public opinion throughout the county with reference to the sheriff's connection with the matter, and several newspaper quotations (pages 91 to 128) from papers published in Middlesex County adverting to the State's effort to secure a foreign jury, and resenting the implication that a fair trial could not be had with a Middlesex jury. Some of these articles criticized the Attorney General for the reflection upon the administration of justice in Middlesex County, which his application was thought to involve. In resisting this application, defendants' counsel (p. 137½) showed that the jury panel had been drawn by the sheriff and the Jury Commissioner from a list chosen by the Commissioner and the previous sheriff in the fall of 1914, to which list the present sheriff had added a few names, only five of which were on the panel of sixty names chosen to try the defendants.

The court, however, ordered a foreign jury, basing their conclusion entirely upon the idea, as

appears from their memorandum (page 138½) that the criticism of the Attorney General contained in the newspaper articles could not but have prejudiced a Middlesex jury. Strenuous opposition had been made by the defendants' counsel to this order upon the ground that its effect would be to reduce the number of peremptory challenges to which they would be entitled, and that under all the circumstances of this case, the defendant should not be subjected to this result.

While this order of the Supreme Court was a discretionary one, and is probably not reviewable on error, nevertheless it can and should be considered in connection with other matters, as having improperly prejudiced the defendants in their trial, as the whole case is here under the 136th section of the Criminal Procedure Act. We submit it is hard upon defendants indicted for murder, that they should be deprived not only of a trial of a jury of the vicinage, but also have their right of peremptory challenge materially reduced because certain newspapers saw fit to criticize the efforts of the Attorney General to obtain a foreign jury. It would be one thing to have ordered a foreign jury upon the grounds originally relied on (but shown to be without foundation) both before Justice Bergen and the Supreme Court, namely, the alleged prejudice of the sheriff in view of the animadversions made upon him by Justice Bergen in his charge to the Grand Jury. It is another thing to conclude that there was nothing in that suggestion, but that inasmuch as the proceedings containing that suggestion had provoked hostile criticism of the Attorney General in the newspapers, it would be better to have a foreign jury. The defendants, who were in jail, had of course nothing to do with these criticisms, and we submit that it is rather hard on them to have their number of challenges re-

duced from ~~200~~ 50 to five by reason of newspaper criticism of the Attorney General, and we submit that this is accentuated by the fact that the conclusion of the Supreme Court to order a foreign jury was based wholly on facts that existed not at the time the agitation and application for a struck jury first arose, but upon alleged facts provoked by such agitation and application.

When the case came on for trial with the panel of jurors from Mercer County, the trial judge ruled (p. 172) that the defendants were entitled to but five peremptory challenges, not that each defendant was so entitled, and a jury was selected with this limitation. We earnestly urge that the defendants' wings were here unduly clipped; that the case was looked upon as involving the respective rights of capital and labor, and the demeanor of the State throughout the trial, as we shall show, was to avail itself of the prejudice existing against strike breakers, and this went so far as to even lug in the names of prominent capitalists in no way connected with the company, whose property was being protected by the deputies. See the second cause of reversal (p. 1258).

We will now call the court's attention to some incidents during the progress of the protracted trial that occurred, which were eminently unfair and prejudicial to the defendants.

The defendant Bavier was being examined on his own behalf. He had already testified for some time (pp. 829-834) and was engaged in describing the conduct of the mob, and giving evidence of the greatest importance, not only to himself, but to all the other defendants, when the following occurred. He was asked (p. 834, l. 22):

"Well, tell us what occurred."

The following answer is reported to have been made by him:

"A. There was firing, they were hurling stones and sticks at us, and quite a number of shots I heard from the direction where they were."

The bill of exceptions then discloses that the following occurred:

"*The Third Juror.* This is altogether wrong. We are not getting half of this.

Mr. Stricker. If the jury has only heard one half of it, I would ask that the testimony be read to them by the stenographer.

The Court. We cannot stop to do that.

Mr. McCarter. I think the jury ought to hear the evidence.

The Court. Do you say you have not heard the evidence?

The Third Juror. Just this last part. I said I didn't believe there would be more than one-half of this witness' evidence heard.

Mr. McCarter. I think it ought to be heard.

The Third Juror. So do I.

The Court. This man's entire evidence to be read?

The Third Juror. I do not think it would be amiss.

The Court. You have not heard it?

The Third Juror. No.

The Eighth Juror. I heard most of it excepting the last part of it.

The Fourth Juror. The most of it we didn't hear. (Last two questions and answers read by the stenographer.)"

We submit that the learned trial judge in his fatigue at the protracted trial here inadvertantly did a great injustice, not only to the defendant Bavier, but to all of those on trial. If testimony is to be given it should be heard, and if it has not been heard, as appears from the foregoing it was not, then the stenographer should have been

permitted to read not simply two questions and answers, but all that the jurors wanted to hear. See the seventeenth cause of reversal (p. 1262).

Again, Police Officer Donovan, called by the State, was under cross-examination, and on page 619, counsel for the defendants asked him if one of the plants of the Agricultural Company had not been stormed and forced in his presence, the purpose being to indicate, as appears on page 620, that the officer was a member of this police force, and the very presence of these deputies made a partisan of him, and that the policeman, with his associates, did everything they could to discourage these deputies, whereupon (p. 620, l. 13) the Court said:

> "Suppose this is so, does that justify these deputies, as you call them, shooting down men without cause or reason?"

We submit that such a remark solemnly emanating from the lips of the trial judge in the midst of the trial, with regard to the conduct of the defendants, was eminently unfair, improper and prejudicial. See the twenty-sixth cause of reversal (p. 1265).

The defendant McLaughlin was asked by the Attorney General upon cross examination (p. 983, l. 28):

> "Q You have been in jail for how long?
> A Going on five months.
> Q Been paid for every day since that time?
> *Mr. McCarter.* We object as immaterial.
> *The Court.* I will allow it.
> A No.
> Q What days haven't you been paid for?
> *Mr. McCarter.* Objected to as immaterial.
> *The Court.* I will allow the question. You may take an exception. * * * *
> A I haven't been paid for a week or more.
> Q But up to a week ago or more you were paid?"

and the following occurred:

"*The Court.* Mr. Prosecutor, what is the purpose of this cross-examination? If he has been paid by somebody since he has been in jail, what effect does that have upon what happened on the 19th of January?

"*Mr. Wescott.* It may not have any effect upon that. It is a very unusual circumstance, that a gentleman should be employed at so many dollars a day, and his services should terminate on the 19th day of January, and from that time on he should not have rendered any service, and yet be paid. It is an unusual circumstance and it has weight in this case. Our proposition is to utilize it. Your Honor, it seems to me, can very well see that that might be very far-reaching in its ultimate effect.

Mr. McCarter. When men's lives are at stake, they would swear falsely, when their lives are at stake, for three dollars a day, is that it, Mr. Attorney General?

Mr. Wescott. I will answer you when the time comes. That is the reason for asking this question.

The Court. I do not quite understand that this question has that purpose in view. If you are asking this witness who paid him—

Mr. Wescott. No. Not who paid him. If he had been paid.

Q (Question repeated by stenographer?)

A Yes, sir.

Mr. Coan. That is all."

A similar line of inquiry was permitted to be pursued in the cross-examination of other defendants. We submit, that whether or not the defendants were paid for the time they spent in jail after their voluntary surrender to the authorities upon their indictment, can have no effect whatever upon their criminal liability for the shooting on the 19th of January. It was, in fact, as ad-

mitted by the Attorney General, utterly immaterial, nevertheless it tended to prejudice the jury. It kept alive the element, that the State constantly sought to bring into the case, of the dispute between capital and labor. See the twenty-first cause of reversal (p. 1263).

Allied to and throwing some light upon the last foregoing incident, was that which occurred in the cross examination of the defendants' witness, Waring (p. 741).

"CROSS EXAMINATION

By Mr. Wescott.

Q How far is the Liebig plant for the Williams & Clark plant?

A Approximately a mile and a quarter; a mile and a half, not more than a mile and a half.

Q And the American Chemical Company is one of the Rockefeller institutions, isn't it?

Mr. McCarter. I object.

The Court. I overrule the question. I don't think that is material.

Mr. McCarter. I am surprised at that question.

Mr. Wescott. Let us see; what has the ownership of the Liebig plant to do with this case? Now, my friend here was very particular to bring out the fact that the Liebig Company belonged to the American Chemical Company. It seems to me that this is perfectly—

The Court. I do not think that makes any difference, whether it was Mr. Rockefeller or Mr. Morgan or myself; if a crime was committed, that is all there is to it.

Mr. Wescott. It doesn't in a legal sense, I agree with you. That is all."

See the fourteenth cause for reversal (p. 1262). Indeed, so far did the learned Attorney General go in the case, that, in the course of his summing up, he stated as follows (p. 1204):

> "And if it were not clear beyond all possibility of doubt that these men are anarchists in their conduct, that they are destroyers of government and order, that if their practice is continued, your home will not be safe, any more than mine; if they are let go the State of New Jersey will be endangered, and its fair fame smirched forever; if I were not perfectly certain, from the undubitable facts in this case, of the guilt of these men—
>
> *Mr. McCarter.* I respectfully object to that statement of counsel.
>
> *The Court.* I did not hear what it was.
>
> *Mr. Wescott.* I will withdraw it. I withdraw. I will put it this way: If the facts did not make the guilt of these men perfectly certain, the distinguished prosecutor here, as well as myself, would join with the judge, and the judge would join with us in advising you to acquit these men. This is not a trifling case."

We submit that the mere withdrawal of the least harmful portion of this improper statement was not enough. It had been made and the harm was done. See the twenty-third cause for reversal (p. 1264).

In cases of this kind the prejudice and harm that result from improper questions or remarks are not removed by their mere withdrawal; for example, we refer to the incident, p. 1153, where the following occurred. The defendants' witness was asked by the Attorney General the question:

> "And O'Brien told you to get those things out?
>
> A Yes, sir.
>
> Q And you got them out?
>
> A Yes, sir.

Q By selling your manhood to this labor union?

Mr. Stricker. I object to that question.

The Court. I overrule the question.

Mr. Stricker. I move that be stricken from the record.

Mr. Wescott. All right, strike it from the record; expunge it.

Mr. Stricker. Oh, yes; it has done its damage, I suppose.

The Court. Strike it out."

Again, the Attorney General in cross-examining all of the defendants was permitted, against the objection of defendants' counsel, to interrogate them with reference to their experience in previous strikes, stigmatizing them as "strike breakers," and thereby seeking on that account to prejudice them before the jury. See pages 1044, 1045 and 1046, where the defendant Williams, after being asked with reference to his experience in previous strikes, was asked (p. 1045, l. 30) "Acting as a strike breaker?" Again, on page 1046, at line 8 the following appears:

"Q What kind of work did you do about these strikes?

A Whatever I was employed—wherever I could get employment that was honest, and men were needed, I would work, and I did work.

Q That is the only answer you wish to make?

A That is the only answer I wish to make to that question; yes, sir.

Q Is there any reason why you did not wish to make a different answer?

Mr. Stricker. We object to that question as put now.

The Court. Upon what ground?

Mr. Stricker. It has been asked, and he has answered. The court has instructed him to answer and he has answered.

Q (Repeated by stenographer)?

The Court. I will allow that question. You can answer that yes or no.

A I am not a strike breaker.

Q What?

A I am not a strike breaker.

Q Is there any reason why you do not want to answer that question in any other wise than you have?

A Yes; there are other reasons.

Q Very well. Those reasons you do not care to divulge?

A I will give you the reason if you wish to have it.

Q Well, give us the reason.

A I do not wish the attorney general, or the counsel, to prejudice this jury against me by branding me as a strike breaker.

Q We do not want to prejudice the jury against you.

A That is my reason.

Q That is the only reason you have?

A That is the only reason. I have no shame of taking employment that is honest, wherever I can get it; yes, sir.

Q How many times have you been connected with strikes—do you remember?

A I should say roughly, eight or ten times."

See the twenty-second cause for reversal (p. 1263):

The Supreme Court (as we contend erroneously) ordered a foreign jury because certain newspaper comments reflecting upon the Attorney General were published in the New Brunswick Press. The effect of this order was an adjudication that a fair and impartial trial could not otherwise take place. What must have been the condition of the minds of the twelve jurymen who tried the defendants after listening to and participating in some of the foregoing incidents? If the mind of the community

became inflamed by reason of newspaper attacks made upon the Attorney General sufficiently to justify the court to order a foreign jury, what must have been the minds of the twelve jurymen who were obliged to listen to verbal attacks upon the defendants throughout the entire course of the trial?

Many other incidents might be selected from this voluminous record to indicate the partisanship, and, as it seems to us, improper zeal of the State's attorney in trying this case. Perhaps some of them standing alone, though worthy of the severest criticism, would be insufficient to influence this court to direct a reversal; but taken as a whole, they seem to manifest that the defendants were undoubtedly greatly prejudiced thereby. Men are not lightly to be deprived of their lives or liberty. Prosecuting officers should rely upon testimony. While the defendants, on the one hand, were strictly confined to the occurrences on the morning of the nineteenth of January, and were not permitted, as we have already seen, to throw any color or light thereon by the conduct of the same mob before that morning, they nevertheless were by direct accusation, by insidious suggestion, and by every ruse and effort at the command of the distinguished representative of the State, pilloried before the jury by efforts to show that they were the minions of plutocrats, professional strike-breakers, and in the opinion of the Attorney General, undoubtedly anarchists and destroyers of government and order.

Finally, we think it not improper to direct the court's attention to the fact that the conviction of these defendants depended wholly upon the evidence of the fifteen year old boy Conlon, whose testimony is found on pages 529 to 601. He, ad-

mittedly, stood three-quarters of a long block away from the deputies, and pretended to have been able to identify all but one of the defendants out of a crowd of forty-five deputies, at a little before eight o'clock on a misty morning in the middle of January. The trial judge directed an acquittal of the defendant Smith, whom he failed to recognize. The evidence disclosed that before taking the stand he was nursed by Treacy Voorhees, who was assisting the prosecution, watching the defendants go to and from the jail to the courthouse. When testifying for the State, he was a ready witness, wholly comprehending the questions; when under cross-examination he affected great ignorance of the meaning of the simplest words. We respectfully urge the court to read the testimony of this lad from beginning to end, and compare his demeanor and conduct in the direct and cross-examination, as well as the language that he comprehended in the one case and failed to understand in the other. To have the whole case hang upon his ability to have identified these particular men out of the crowd, under existing conditions (it not being pretended that he saw any of them fire a shot) is certainly to place it upon a very slender thread, and the court will, we are confident, give the case full consideration. This is all we ask, and we feel sure that it will inevitably result in a reversal.

IT IS RESPECTFULLY SUBMITTED THAT THE JUDGMENT SHOULD BE REVERSED.

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ROBERT H. McCARTER.
Of Counsel with Plaintiffs in Error.

March Term, 1916.

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NEW JERSEY
Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
JAMES BAVIER ET AL.,
Plaintiffs in Error.

On Indictment for Murder.
On Error to Supreme Court.

Brief for Defendant in Error.

FACTS OF THE CASE.

The statement of facts as set forth in the beginning of the Brief of Plaintiffs in Error is an artful intermingling of undisputed facts and circumstances and of evidence favorable to plaintiffs in error, directly contradicted by other evidence in the case. This evidence where favorable to plaintiffs in error is adroitly stated as if uncontradicted, and as if the only evidence relating to the particular matter. This statement also contains circumstances alleged as facts concerning which there is no evidence whatsoever in the record. *We briefly refer to these.*

1. (Page 1 of Brief.) That a strike commenced on January 4th and lasted until January 25th (p. 723, lines 15–17). There is no such evidence at that page, Mr.

Waring, the witness, is asked the question, "How long had the strike been in operation?" This question was overruled, and also the offers to prove the existence of the strike and all that occurred prior to the arrival of defendants and other guards, at the Williams and Clark plant. This witness testified nothing as to the existence of the strike or as to violence or any circumstances prior to January 19th, the day the deceased was killed, except that he called upon the Sheriff for protection.

2. (Page 2 of Brief, lines 1–11.) That early in the strike, owing to disorder and danger to property and life, defendants and others had been summoned and sworn in by the Sheriff of the County, and detailed to preserve life and property in and about this plant (Williams and Clark). That this disorder was sufficient to impel the manager, Mr. Waring, to ask the Sheriff for protection (pp. 725, 726, 727). There is no evidence as to this in the record. Mr. Waring only testifies on these pages that he saw the Sheriff on January 5th, that he told the Sheriff *he felt* the *property* was in danger, that he would hold the County liable, demanded protection, and that the Sheriff promised protection. Nor is there anywhere any evidence to support the statement that defendants and others had been *summoned* and sworn in by the Sheriff *early in the strike owing to disorder and damage to life and property*. The only evidence on this point is that of the defendants, themselves. They all testify that they were engaged by, or through, the detective agency of O'Brien, of Newark, to act as guards at this plant; that they went directly from Newark to the plant and did not see or hear from the Sheriff until after their arrival. They were not *summoned by the Sheriff*. There is no evidence that the Sheriff ever knew or heard of any of them until after their arrival at the plant. They were sworn in by the Sheriff after their arrival. We do not know the nature of the oath. They do not remember. There is no evidence that they were sworn in by the Sheriff as "deputies" or "deputy

Sheriffs." Defendant Wallace testifies p. 1000 (lines 10–21), that the Sheriff instructed them to *use judgment* and to be very careful to see that the *plant was properly protected* and to *stay in the place*.

3. Brief, p. 2, at line 27.) That the *strikers* gathered in front of the Liebig plant on the morning of the 19th to the number of 300 (p. 892). There is no evidence that any of this crowd or all were *strikers*; that they had gathered for the purpose of stopping the train which was expected to arrive with working men. There is no evidence that working men were or were expected on that train, or that the train was stopped by strikers. The reference (p. 1098) is to Frank J. Rick's testimony, and that all relates to the occurrence at the Williams and Clark plant, not to the Liebig occurrence, which happened an hour earlier. That the train was permitted to proceed only when the strikers had satisfied themselves that it contained no working men (pp. 239 and 660). Both of these references in defendant's brief are to testimony of Andrews and Vail, relating solely to the Williams and Clark occurrence, and not at all to the occurrence an hour earlier at the Liebig plant. Mr. Waring, superintendent of the Liebig Company, and defendant's witness, describes very clearly and dispassionately what occurred the morning of January 19th, at the Liebig plant (Case, p. 737, from line 20, and p. 738). A crowd had collected about 6:40 A. M., about 300 on the railroad right of way. There was an obstruction on the railroad track. The train due there about 7 A. M. arrived and stopped at the obstruction. The Sheriff talked to a man in the crowd and the obstruction was then taken off and the train proceeded. Part of the crowd went up the track in the direction of the Williams and Clark plant. They went in a straggling mass. One bunch of probably fifty carrying clubs and sticks. This was all that occurred at the Liebig plant that morning; a disorderly, but far from riotous crowd, amenable to the Sheriff's commands and easily con-

trolled by him. Far different from the situation so artfully and picturesquely depicted in defendant's Brief. (See also testimony of De Russy, p. 805, and Farley, p. 809). There is no evidence that the crowd that proceeded up the track from the Liebig works, at about seven o'clock, marched in a body to the Williams and Clark plant, as stated in defendant's brief. Waring merely states that they proceeded in that direction. *It is noteworthy, however,* that the crowd said by the defendants to have joined the assemblage at the Williams and Clark plant, about eight o'clock, coming from the direction of the Liebig plant, could not have been this crowd spoken of by Mr. Waring and the other witnesses. As this crowd left the Liebig works about seven, they could hardly have been forty-five minutes covering the mile to the Williams and Clark plant, especially if in the hostile and riotous mood defendants would have us believe.

It is plain from the *actual* testimony as to the occurrences at the Liebig plant that morning, that there was no actually disorderly situation; that the Sheriff was in control, and that no angry, dangerous mob marched from the Liebig plant to inflame and aggravate the situation at the Williams and Clark plant.

4. (Brief, p. 3, about line 11.) "That the strikers armed with clubs, stones, sticks and firearms, *dashed* for and *boarded* the train, to ascertain whether or not any workingmen were aboard who might take their places at the Williams and Clark plant" (p. 260, §§ 30–35). This highly colored language conveys the impression that when the eight o'clock train stopped at the obstruction near the Williams and Clark plant, an angry, excited, dangerous mob, madly surged over the train, armed with stones, sticks, clubs and firearms, searching for workmen and endangering the lives of passengers. What are the facts? The reference in the Brief is to the testimony of the train conductor, Sullivan, at page 261, he says he went through the train after it had

started, found one man who had gotten on and put him off. At pages 254 and 255, he says, that he saw two or three men with clubs get on the step. They got off before the train started. He did not see them go through the train. The testimony of men on the train, passengers, is that the strikers *did not* go through the train, only looked in the end window. And the testimony of the conductor (p. 250), as illustrative of the conduct and temper of this crowd, is very significant. That so soon as he told them there was nobody on the train except the regular passengers, they removed the obstructions and allowed the train to proceed. An angry, hostile, excited mob, to desist from their set purpose upon the mere word of one individual.

4. The statement on page 4, of defendant's Brief, and the description of the unfortunate occurrence is all from testimony on behalf of defendants, and the references are all to this testimony. All of this testimony, except that as to the purposes with which the defendants and others left the works, is contradicted by the direct testimony of eye witnesses, many of them disinterested. The brief states that "several deputies who were around with riot guns fired a volley in the air over the heads of the strikers," and that this is corroborated by one of the State's witnesses, who testifies "that the shots came down from above as though it rained." The reference (p. 413) is to the testimony of Charles Rab, one of the crowd, who was wounded in the buttocks while running away (p. 407) by a small shot. He does not say that the shots dropped upon him, seemed to come down like rain. He is asked that question and answers "simply fell all around me." Here is no corroboration of a volley fired in the air. His testimony p. 412) is that a deputy fired a *gun* in the air, that *then* he began to run and *then* the shots were flying around him like a hail storm, the shots fell by him. True, there was no proof as to who fired the shot that killed the deceased, Tessitore; and while the State did not

prove that any one of the ten defendants fired a shot, yet some of the defendants themselves admitted that they were armed, and several that they fired shots. Nor does the proof of the presence of the defendants convicted depend altogether upon the evidence of the boy, Conlon, as stated in the Brief, on page 5. Seven of the defendants admitted their presence at the scene of the shooting, namely, Bavior, p. 833; Williams, p. 1038; Tome, p. 1075; Ricks, p. 1097; Moran, p. 1176; Mullin, p. 924, and Wallace, p. 990. O'Mara did not testify, and McLaughlin denied that he was out of the plant. Five of the defendants admitted they were armed; Bavior, p. 828; Williams, p. 1039; Tome, p. 1075; Mullin, p. 924, and Wallace, p. 990. Two admitted they fired shots; Tome with a pump-gun (three shots, all he says, in the air), and Wallace with a revolver (three shots, he says, in the air).

We have thus carefully examined the statement of facts in defendants' Brief, for the reason that while, apparently, a fair and dispassionate one, it is actually so inaccurate and artistically colored, as to be likely to mislead the mind as to the true situation and the actual happenings should it be passed over by the counsel for the State without question or remark.

THE LAW.

The insistment of defendants is (Brief, p. 6), that the assemblage of this mob or crowd about the railroad tracks, many armed with clubs or sticks, and the obstruction of the track and stoppage of the train, constituted a riot and the assemblage rioters, and that it *became the duty* of defendants and others, whether as deputies, assistants or citizens, to break up the riot. And (p. 7), that this existing riotous condition *justified* the defendants as citizens in emerging from the works they were *set to guard armed to suppress the riot.* That they were a lawful body when they emerged armed from

the plant to *disperse* the rioters, and that if any of the *defendants actually killed* the *deceased* they were under the circumstances justified in so doing. (Brief, p. 9.)

First, as to the duty of citizens to suppress a riot.

Undoubtedly, on occasions of *extreme disorder,* actual riot, when life and property is threatened, citizens may lawfully endeavor to suppress such riot, and may use such means as are *reasonably necessary* to do so, *but no more;* and this kind of popular vindication of law and order is most hazardous, and those who assume upon themselves public functions must be wary in the exercise of them.

This statement of the law is supported by all the authorities. It is the very language quoted by defendants in their Brief from the charge in the case of *Commonwealth* v. *Daly, 2 Clark (Pa.)*, 361-371, as an accurate statement of the law.

Said the Judge in that case:

> "But I expressed in my opnion (charge to Grand Jury) and still think, that citizens using such force had better be assistant to the Sheriff and such public functionaries, than to assume such an urgent authority, except in cases of the extremest necessity. But if under proper circumstances the law will extend to citizens, the same indemnity, in resorting to extreme measures for the suppression of dangerous riots, that it affords to officers acting for the like object, it will certainly afford no greater."

And again:

> "There is nothing here said or intended to convey the idea that a mere unlawful or even riotous assembly can be shot down by musketry without any previous effort being made to suppress it by less bloody and more pacific measures. * * * The law recognizes the existence of a necessity for the suppression of riots and rioters by extreme measures; but it is a necessity only justifiable in extreme cases."

And Lord Chief Justice Tindall in his charge quoted in defendant's Brief (p. 12), says:

> "But if the occasion demands immediate action and no opportunity is given for procuring the advice or sanction of a magistrate, it is the duty of every subject to act for himself."

Note the qualification, if the occasion *demand immediate action* and *no opportunity* is given to procure official sanction.

Wharton on Homicide, after stating that it is as much every man's duty to interfere to prevent a breach of the peace as to prevent a felony, says (*3d Ed., Sec,* 523, *p.* 778):

> "A person is not excusable for killing another to prevent a breach of the peace, where he used more force than reasonably appeared to be necessary to restrain him. Neither can an unlawful or even riotous assembly of persons be shot down and killed without any previous effort being made to suppress it by other means."

The charges to the juries in *Commonwealth* v. *Hare,* 4 *P. L. J. R.,* 2 *Clark* (*Pa.*) 467; and *Commonwealth* v. *Daly,* 4 *P. L. J. R.* 150, 2 *Clark* (*Pa.*) 361; and the charge of Jones, J., to the Grand Jury *In Re Riots of* 1844, 2 *Clark* 135, 3 *P. L. J. R.* 394, are a most complete and masterly exposition of the law upon this subject. These trials and charges grew out of the Know-Nothing Party riots in Philadelphia in 1844.

The law then undoubtedly is, as supported by all the authorities, that citizens may in *extreme cases where life and property is in danger* proceed to suppress a riot where the occasion demands *immediate action* and no magistrate or officer *is present or within reach;* but that citizens resorting to such force had better act in concert with and under the Sheriff than to assume such urgent authority, *except in cases of the extremest necessity.* That an unlawful or *even riotous* assembly cannot be suppressed by bloodshed without any previous resort to

more pacific means. That only such means as are reasonably necessary can be justified, and that killing to prevent a breach of the peace or to suppress a riot is never justifiable if less degree of force be sufficient.

The charge of the learned trial Judge in this case under review exactly stated the law upon this point. He said (Case, p. 1220, l. 20, and p. 1221 to l. 8):

> "These defendants seem to have two defences. I am not myself quite clear about it, but I shall assume that they have two defences. First, that there was an unlawful assemblage or a riotous gathering of persons out there, and they went out to suppress that, and to bring in, or protect persons who were coming in on the train. While there is such a thing as a body of citizens getting together and suppressing a riot, it is always much wiser that such body of citizens should act under the direction of some officer, the Sheriff, or a constable, or some peace officer. There are times, of course, when the assembly reaches such a point of riotous conduct, and life or property is in danger, that the citizens may interfere and by force undertake to suppress a riot; but that condition must exist, and it is for you to say whether any such condition existed that morning, on the nineteenth day of January, as would justify the firing of a volley into that crowd, if it was done. That is what the State claims, and some of the defendants' witnesses say that this body of men fired a volley toward this crowd of men who were on the track. It is for you to say whether any such condition existed as justified such a resort to force as to take human life."

It was, undoubtedly, for the jury to say, on all the evidence, whether on the morning of the nineteenth such a riotous condition existed as to justify citizens to interfere by force to suppress such riot and to justify the resort to bloodshel for that purpose. And this the trial Judge charged.

This being the settled law of the case, defendants second, third, fourth and fifth requests did not correctly state the law and the Judge properly refused to charge as thus requested.

It is not the law, as the second request specifically states, that the defendants or any of them would have been *necessarily* justified in taking life if endeavoring to suppress a riot or unlawful assembly, or to disperse such a gathering.

While the third request may contain a correct technical academic definition of a riot, yet it does not follow, nor is it the law, that armed citizens would be justified in suppressing such an assemblage by the use of arms. It is not the law that it is the *privilege* as well as the *duty* of citizens to disperse such an assembly.

It was not the duty or privilege of the defendants to suppress such a technical riot, or, every riot, or to carry and inferentially to use arms in the performance of such duty. And the fourth request was therefore properly refused. Only if the riot had assumed aggravated proportions are private citizens justified in intervening, and even then the use of arms is justifiable only in the extremest necessity.

The trial Judge did charge the substance of the fifth request as already quoted, and the defendants suffered no injury by the refusal to charge as requested. But the request goes further than the law. These defendants, by their own testimony, were not citizens or residents of the State. The request asked the Judge to state to the jury, as the law, that it was the duty of any aggregation of persons, not citizens of the County or State, mere temporary abiders, not even residents, to suppress with arms and force a riot. This most fortunately is not the law. The Judge did charge that *citizens* may interfere and undertake to suppress a riot by force where life and property are in danger, and this was the substance and essence of the request. He most properly refused to charge that foreigners,

with no interest or stake in its peace or welfare may have imposed upon them such a duty by law.

I.

That There Was No Necessity for the Riot Act to Have Been Read.

The trial Judge did not charge or intend to charge that in *all cases* the riot act must be read and the expiration of the hour awaited before any steps can be taken to preserve order to save life or property, or to disperse a riotous, unruly and dangerous mob resisting lawful authority. The jury could not so have understood the charge or have been misled by it to the injury of defendants.

When the authority coming on the scene finds *gross* disorder prevailing, actual pillaging and destruction proceeding or *immediately* threatened, he may at once proceed to meet force with force and suppress at once such turbulent riotous outbreak.

But the very authorities cited by defendants' counsel show that it is the usual, proper and necessary step, in all but most extreme cases, first to read the riot act. Lord Mansfield's language as quoted, says: "He is required to read the act." "It is a step in *interrorem* and of gentleness." But, "it is not made a necessary step, as he may *instantly* repel force with force." It is a necessary step, evidently, in the opinion of that great Judge, unless the Sheriff or Magistrate finds himself *instantly* compelled to resort to force. So Lord Loughborough, in the extract quoted, nowhere says that the reading may be dispensed with. He is dealing with the necessity of awaiting the hour. He only says that if before the expiration of the hour the assembly instead of obeying the law, further violates it by gross outrage, no time need be wasted in vindicating the law.

The authorities cited by defendants' counsel seem

to support the view that the riot act should be read, except where *immediate* force is necessary to meet force.

The Judge's charge on this point was certainly not contrary to the law. He nowhere says that the riot act must be read in all cases even where force is immediately necessary, nor that the hour of the statute must be observed. He is stating what the Sheriff is authorized to do. He says (Case, p. 1216, l. 6), "The law *authorizes* the Sheriff, when there is an unlawful assembly, to read the riot act, and then, if after an hour, they do not disperse, he is justified in arresting everyone of them as lawbreakers."

This is certainly the law, nor could the jury be misled by it, especially in view of the rest of his charge.

He says it is not pretended the Sheriff did this. No, the Sheriff did not do this. He was only a mile away, a telephone at hand. Had he been called and, thus, in the solemn language of the act, charged and commanded in the name of the State, all persons peaceably to depart, can we doubt that these terrible happenings would have been averted and these defendants, or the others with them, saved not the duty, but as they claim, the *high privilege* of killing the deceased, and shooting fleeing citizens as they ran?

Under this same head it is argued that these defendants, in committing these acts, were Sheriff's assistants, and thus protected.

The argument is (Brief, pp. 20-21) that the Sheriff, having been notified that the County would be held responsible, swore in these men as deputies, provided them with badges, *and in effect* called them to assist him in keeping peace. That the riot obviously was beyond the power of the Sheriff to cope with. He called for assistance, and defendants responded and became his assistants.

There is no evidence that the Sheriff gave these men badges, if that be important. How did he call them

and when? If he called them it must have been through the O'Brien agency. If they responded to any call it must have been to a call from O'Brien or from the Williams and Clark people. The Sheriff found them at this plant nearly three weeks before the occurrence, he administered some kind of an oath and charged them with *the duty of guarding the plant and remaining in the plant.* How can it be pretended that such an employment, if it were an employment, constituted a call for assistance in quelling disorder not yet foreseen? The only assemblages that could be dignified with the name of unlawful that occurred during all this period, were the two on the morning of the 19th, that at the Leibig plant, which the Sheriff showed himself competent to cope with. He dispersed that without violence. He had a force there *he had summoned* under his direct command. He never *summoned* these men for this or any purpose. He found them as guards at plant two weeks before and charged them to guard the works. *If he called them* it was only for that purpose.

The posse comitatus, the power of the County, is as the name implies, the whole able body of the male inhabitants of the County. The Sheriff summons in emergency, they in duty bound respond. Whether these men could have been legally summoned, whether they would have been bound to respond if summoned, is beside the question. They were not *summoned* by the Sheriff as part of the body of the County.

II.

That defendants, though not residents of the County, were lawfully selected by the Sheriff.

The defendants also contend that these defendants and the others with them were "deputy Sheriffs," or "Sheriff's assistants," and, therefore, legally authorized to act to suppress a riot, even though they might not have been justified as mere citizens, and that this of-

ficial character justified their action in firing upon this assemblage and killing the deceased.

Whether or not they were deputy Sheriffs, or, Sheriff's assistants, in this case makes but little difference. Even the Sheriff, had he been present, and these men his *posse comitatus* summoned to aid him in the preservation of the peace, would not have been justified in firing on this assemblage, in resorting to bloodshed, without first endeavoring to suppress the riot by more humane means. He should first have commanded them to disperse. He should have endeavored by less drastic measures to preserve or restore the peace, before resorting to such extreme measures. Only the *extremest* necessity would have justified bloodshed. Had the Sheriff been present and fired himself the fatal shot, it would have been for the jury to say whether the circumstances were such as to justify such extreme measures.

The defendants and the others acting with them were not deputy Sheriffs, or Sheriff's assistants.

There is no such office known to the law of New Jersey as "deputy Sheriffs." As the trial Judge points out in his charge, the Sheriff appoints a deputy Sheriff. He deputes officers, constables, to serve writs, to act for him in special matters, but this is always by special deputation. No authority can be found for the idea that the Sheriff has power to depute to any number of persons his general powers as the Chief Peace Officer of the County, as the Conservator of the Peace, to act for him and as he could act. And yet this is defendants' position and must be their position to support their contention.

Deputy Sheriffs were unknown to English law until 50 and 51 *Vict., C.* 55, which authorizes the Sheriff to appoint them. *Chase's Blackstone, p.* 92, *note* 5.

It is argued that Section 73, Criminal Procedure, Act 1898, prohibiting Sheriffs, or other persons authorized to appoint special Sheriffs, Constables, Marshals, Policemen or other peace officers, etc., from appointing any such person not a qualified voter of the State, authorized

the Sheriff to appoint deputy Sheriffs; and that Section 7 of the Disorderly Persons Act, and the supplement of 1912, to the Crimes Act, permitting deputy Sheriffs among others to carry dangerous weapons inferentially gave that power. But these statutes are a prohibition upon the exercise of a power, if existing. They cannot be construed to confer power. And if Section 73 of the Procedure Act does confer such power, the Sheriff violated it by the appointment of these defendants, for their own testimony shows that they were not qualified voters of the State, and the appointment was void.

III

THAT IT WAS NECESSARY FOR THE SHERIFF TO HAVE BEEN PRESENT.

It is not contended that the presence of the Sheriff is always necessary, or that in emergency they could act through his deputy. And of course if these defendants were justified in acting as they did as citizens, the presence of the Sheriff would have been unnecessary. They could not have been justified in acting as citizens in his presence.

The language of the Judge, quoted at page 31 of the Brief, correctly stated the law and could not have given the jury the impression there suggested. He says, in effect, that if the Sheriff had led these men out, or directed these men to act, they would then have become his assistants, sheltered by his authority, in so far as he acted within his authority and they did not exceed his directions. That the jury could have reasonably inferred from this language, especially in view of his whole charge, that the defendants could not have acted, in any event, or in any emergency, as citizens could have lawfully acted in the absence of the Sheriff and on their own authority, is inconceivable.

It is a most highly colored use of language to say, as stated in Brief (page 30) that it appears in the case that

both the Williams & Clark and the Leibig plants were under a state of seige that morning. From nothing in the evidence can such language be warranted. The disturbance had ceased at the Leibig works some forty-five minutes before. The crowd had departed. The Sheriff could have been summoned and would undoubtedly have reached the place in time to avert the attack upon the crowd. But his presence *was not wanted*. It might too greatly have hampered these men and their associates in the line of conduct they had evidently resolved upon if the opportunity presented itself.

IV.

That the Court Erred in Overruling Challenges to Certain Jurors and Refusing to Permit Them to be Sworn.

At the trial, challenges were interposed to certain jurors. These were challenges to the favor and were overruled by the trial judge.

As to the jurors Fuhrman and Wooley.

The juror Fuhrman was challenged to the favor. The Court asked upon what ground, and the answer, by the counsel for the defendants, was, "On the ground that this talesman is a person likely to be interested in the labor union to an extent which might bias him from rendering a verdict according to the evidence in this case." This challenge was overruled for the reason that it was not a good ground of challenge. The challenge was not that the talesman was, by reason of his interests in labor unions, biased to such an extent as to make him incapable of rendering a verdict according to the evidence, but that he was *likely* to be interested to an extent which *might* bias him, and the Court was right in overruling such an indefinite challenge as this. Even if it had been proved that the talesman was interested in labor unions, and that by reason of such interest it was possible that he might

be biased, this would not be a good ground of challenge. To justify a challenge to the favor, the bias must be absolute and such as would render the talesman incapable of an impartial verdict if sworn as a juror.

The challenges to the talesmen Wooley, Crider, Bentley and Holcombe were even more indefinite. The challenge was to the favor, but no ground for such challenge was alleged as to either one of these talesmen. Having challenged to the favor, without assigning any ground for such challenge, the counsel for the defendants asked that the talesman be sworn "for the purpose of eliciting information as to whether or not he possessed any bias which would prevent him from rendering an impartial verdict." That is, having challenged to the favor, without assigning any ground therefor, the defendants proposed to swear the talesman and to examine him for the purpose of endeavoring to elicit some information upon which they might base the ground for a challenge.

If it be argued that the ground for the challenge to the talesmen Wooley, Crider, Bentley and Holcombe, was the same as that for the Talesman Fuhrman, the cause thus stated would be insufficient, if proved as ground for challenge to the favor.

So in regard to the talesmen Bradshaw, Green and others, no ground was alleged for the challenge to the favor, and the trial judge properly overruled the challenge. It will be noticed in each case that the challenge is simply a challenge to the favor, with no ground assigned. After the challenge to Bradshaw, counsel stated: "I desire to elicit information from the gentleman as to whether or not his commercial associations are such as would prevent him from rendering a verdict in this case according to the evidence." But this was no challenge. He proposed to swear the talesman only for the purpose of endeavoring to elicit information upon which a challenge to the favor might possibly be based.

V.

That the Trial Judge Erred in Confining the Defendants to Five Peremptory Challenges.

The trial Judge did not, in fact, confine the defendants to five peremptory challenges. It is true that the Judge, after argument, announced the conclusion arrived at by him, as stated by the learned counsel in his brief, on page 36, but the Judge further states, on the same page (Case, p. 172, line 27): "So, when the occasion arises, I shall rule that the defendants are entitled to but five challenges, collectively, and at that time you may take an exception." On p. 169, when the question of the number of peremptory challenges allowed was first raised, and before the argument thereon, the Court said this: "My difficulty is to know what I am to decide. What issue is there on the record? If, after five have been challenged, and you should challenge the sixth, then the question might arise, and I would be perfectly willing to settle the question." And on page 170, line 10, after statement by defendants' counsel of their position, the Judge remarks: "Well, I will hear argument." As a matter of fact, the defendants did not exhaust the five peremptory challenges to which, even under the announced conclusion of the Judge, they were entitled. It appears from the record that the defendants exhausted but a single challenge. The defendants, then, suffered no harm by reason of this ruling and limitation of the number of peremptory challenges, if there was, in fact, such limitation.

The defendants were either entitled to five challenges each, or to five collective or joint challenges. The peremptory challenge actually interposed was a joint challenge, and the defendants, by interposing such joint peremptory challenge, and refraining from interposing any separate challenge, on behalf of any single defendant, may be regarded as having acquiesced

in the ruling of the Judge, and have waived their rights to individual challenges, if such rights existed.

The contention of the defendants, in their brief (page 41) seems to be that an injury was done them, in that they could not risk exhausting their challenges, when, under the ruling, they might find themselves confronted with jurymen whose presence on the trial they could not brook. The question could have been raised and their rights preserved by challenging peremptorily on behalf of a single defendant, and having the Court rule upon such challenge, as the Court indicated its willingness to do when the occasion arose, and to except to the ruling if adverse to the defendants.

The defendants were only entitled, under the law, to five collective challenges, and the Judge properly so ruled.

The revision of 1898, which alows twenty peremptory challenges to *every person* indicted for the several crimes therein specified, expressly provides that "this section shall not apply to struck or foreign juries."

While this section entitled *every person* indicted for any of the crimes mentioned therein to twenty individual challenges, even though indicted jointly with others (*Moschell* v. *State*, 53 *N. J. L.* 498), yet the section not applying to indictments tried by struck or foreign juries, persons so tried, on a joint indictment, would not be entitled to several challenges by reason of anything in that section contained. Nor would a single defendant, indicted for any crime mentioned in that section, if so tried, be entitled to twenty challenges. Not coming within section 80, as entitled to twenty challenges, he would fall within the first clause of section 81, if there were no special provision for peremptory challenges in the case of struck or foreign juries, and defendants so tried on a joint indictment for any of the crimes mentioned in section 80 would, in that case, come within the provisons of the first clause of section 81, providing for cases where twenty peremptory challenges are not allowed. But defendants jointly indicted

coming within section 81, are only entitled to ten collective challenges, and not to separate challenges. *State* v. *Raschman*, 68 *N. J. L.* (39 *Vroom*) 120; *State* v. *McQueen*, 69 *N. J. L.* (40 *Vroom*) 522.

So that defendants jointly indicted for murder, and thus tried (if there were no separate provision for peremptory challenges in cases of struck or foreign juries) would have been entitled to only *ten collective challenges*, although if tried by a jury from the general panel, they would each have been entitled to twenty challenges.

Prior to the Criminal Procedure Act of 1898, section 40 of the Jury Act provided for *three* peremptory challenges, where defendants were not entitled to twenty, and this section was also construed in *Moschell* v. *State*, *supra*, to give, upon a joint indictment, only three collective challenges, and it was held in that case that struck juries came within its provisions. It, therefore, followed that persons indicted for murder or other crimes specified in section 80, if tried by a struck jury, had only three peremptory challenges, and if upon a joint indictment, three collective challenges. This was the situation until the adoption of the Criminal Procedure Act (Revision of 1898), when section 81, now in force, gave, by its first clause, ten peremptory challenges, instead of three, in cases where twenty were not allowed, and five peremptory challenges in cases of struck or foreign juries.

The question, then, in this case, is as to the meaning of the language in the third clause of section 81, as to whether it is to receive a different construction from that put upon the language in the first clause of the same section.

If it is to be construed differently, and to be construed as giving the defendants in this case each five peremptory challenges, then we have this result: if a defendant upon an indictment for a minor crime, not within the provisions of section 80, were tried by a jury

from the general panel, he would be entitled to ten peremptory challenges, but if by a struck or foreign jury, he would be entitled to only five. But if several defendants were jointly indicted for a minor crime, if tried by a jury from the general panel they would be entitled to only ten collective challenges, but if tried by a struck or foreign jury, they would be entitled each to five individual challenges.

In other words, the privilege of peremptory challenge would be confined where most needed, and extended where least needed. Defendants jointly indicted and tried by a struck jury would be entitled to more peremptory challenges than if tried by a jury from the general panel. This is so contrary to the reason of the case that it is impossible to accept it as the correct interpretation of the statute. The language of the first clause of section 81 is: "The defendant or defendants and the Attorney-General or the Prosecutor of the Pleas shall each be entitled to challenge peremptorily ten of the general panel of jurors summoned," &c., and this has been construed, by the cases above cited, to give only ten collective challenges in the case of a joint indictment. The language of the last clause of the same section, referring to a struck or foreign jury, is as follows: "And upon the trial of any indictment for which a struck or foreign jury shall be summoned and returned, five peremptory challenges each shall be allowed to the defendant and to the State." The word, "defendant" here is used in a collective sense. The apposition of "defendant" and "State" is significant. "Defendant" is used as descriptive of the party or parties defendant to the indictment, just as the "State" is used as descriptive of the prosecutor of the indictment. The true meaning of this language of the section and its fair interpretation is that both the State and the party defendant (whether one or more) to the indictment, shall each have five challenges.

VI.

THAT THE TRIAL JUDGE ERRED IN EXCLUDING TESTIMONY OF MATTERS ANTERIOR TO THE DAY OF THE HOMICIDE.

At the trial, all testimony relating to matters before the day of the homicide were excluded by the trial Judge. Everything relating to what had occurred in the way of disorder or alleged rioting or tumultuous conduct, either at or in the neighborhood of the Liebig plant or the Williams & Clark plant, before January 19th, the day of the homicide, was excluded. The defendants were limited in their proof to the events transpiring on the day of the homicide.

The theory of the State, in the trial of this case, was that the defendants, and others with them, emerged from the Williams & Clark works on the morning of the 19th, and made an attack, with firearms, upon the crowd assembled at and about the railroad station near that plant; that this attack was unjustifiable, and that the defendnts were legally guilty of the killing of the deceased, Tessitore, whether any of them actually fired the fatal shot or not.

The question in the case for the jury to decide was whether these defendants, and the others with them, were justified in acting as they did act, in view of all the circumstances existing at the time the attack was made. Facts or circumstances happening anterior to the time of the attack, or immediately preceding the same, would be irrelevant to the question at issue. How the same or a similar assemblage acted upon another day, at the same place, or at a different plant a mile away, could have no bearing upon the question at issue, because such an assemblage, however disorderly or riotous, could not justify an attack upon this assemblage, upon this particular morning. Nor could events transpiring at other times, such as attempted destruction of

property and injury to life; that some strikers had shot at a man on another occasion, at another place; that crowds of men or strikers had, upon another occasion and another day, surrounded these two plants; that they had fired stones and broken windows; that they had, by force, taken workmen out of the Williams & Clark plant who were working during the strike, could be no justification for attack by these men and their associates, upon this assemblage upon the morning of the 19th, at or about the station in front of the Williams & Clark plant. Such happenings did not constitute part of the *res gestæ*. The question, as we have said, for the jury to determine, was whether the assemblage that morning had assumed such a hostile, riotous and dangerous condition, threatening life and property, as to justify these defendants and their associates to issue from these works they had been specifically set to guard, to suppress these conditions and to disperse this assemblage, by the immediate use of armed force, involving bloodshed. Upon that issue, the conduct and actions of persons or assemblages at other times and upon other occasions, remote from this, could have no bearing, and the trial Judge acted properly in excluding all such evidence.

The cases cited in the learned counsel's brief are not in point, and do not uphold their contention.

In *Commonwealth* v. *Campbell* (7 *Allen* 541), the defendant was indicted for murder. The homicide was committed near the armory, on Cooper street, Boston, at about seven o'clock in the evening, during a riot. The Attorney-General offered evidence to show riotous acts committed by the defendant in Charleston street, at about one o'clock in the afternoon of the *same day*. The Court (Biglow, C. J.) held that "If the acts which the government now offer to prove as having taken place at an earlier part of the day, and several hours before the homicide was committed, were participated in by the prisoner, and were done with the same general pur-

pose and design of resisting the enforcement of the laws and disturbing the public peace, as those which were committed in Cooper street at the time of the homicide, and were so connected together as to form part of one transaction, and to constitute one and the same riot, or unlawful assembly, then it is clear that they are admissible as tending to prove the guilty purpose and intent of the prisoner at a subsequent point of time, when he was present at the alleged riot at the place of the homicide."

This testimony so offered was afterwards admitted, upon evidence being produced connecting the two periods so as to constitute one and the same riot, as suggested by the Court.

So, it is to be noticed that the evidence was admitted as being part of the one and same transaction, and the two events as parts of the same continuous rioting or unlawful assemblage. But the testimony offered by the defendants and overruled could not, under any stretch of the imagination, be regarded as one and the same transaction, and part of the same unlawful assemblage happening on the morning of the 19th, at the Williams & Clark plant. The occurrence at the Liebig plant, on the morning of the 19th, prior to the events happening at the Williams & Clark plant, and all the testimony of defendants relating thereto, offered by the defendants, was admitted by the trial Judge.

There is another distinction between the case under review and that last above cited. The defendant, in that case, was one of the alleged rioters who were responsible for the homicide. It was their prior, unlawful acts, upon the same day, that was admitted on behalf of the State and against them, for the purpose of showing the guilty intent and purpose of the rioters. In this case the testimony was offered not by the State for the purpose of showing the unlawful object or purpose of the defendants, but by the defendants for the purpose of justifying an otherwise unlawul act on their part.

Petry v. *Cartright*, 70 *S. W.* 297, was an action brought by the wife against a city marshal, under a Kentucky statute, for damages for the death of her husband, who was killed by the marshal while fleeing. The defendant had been in a fracas with two men, and when the marshal came up the defendant ran and was shot by the marshal. The fracas was the result of insulting conduct by two men (Blye and Crouch), with whom the defendant was fighting, to the wife and sister of the defendant, immediately before the fracas, and the killing by the marshal. The Supreme Court (Ky.) held that the trial court should have allowed the evidence as to what took place between Blye and Crouch and the two women; also as to what took place between them and the defendant (immediately before the killing by the marshal); as the women were only a short distance from home when the transaction occurred, and before they got home they heard the shots. "The whole thing" (says the Court) "was so closely connected that it should all be regarded as one transaction, and the evidence referred to was competent as *res gestæ*."

In *Commonwealth* v. *Martin* (9 *Kulp* 69), the Sheriff of the county and the other defendants, fifty-seven in number, constituting his *posse comitatus*, were indicted for murder. The question involved was as to the rights and duties of the Sheriff himself in the suppression of a riot, and whether the purpose of the Sheriff and his posse, in suppressing the riot on the 10th of September, 1897, was a criminal one, and the Court, in its charge, say: "That whether the purpose * * * was a criminal one cannot be fairly answered without a comprehensive review of all the facts and occurrences which led up to, and culminated in, the final volley fired by the deputies on that day, and which resulted in the death of the person named in the indictment." After this prelude, he uses the language quoted in the brief, namely, "The events of the week preceding the 10th are so knit together in the fabric of the case that they cannot be

considered as entirely independent and separate transactions, but must be regarded as constituting together the history of the case." The learned Judge then goes on to say: "If the Sheriff became satisfied, after a careful examination of the situation in and about Hazelton, that the public peace was threatened, that the people were terrorized, and that there was danger of a riot, if the demonstrations of the men engaged in the strike were allowed to proceed, he had the right, as the chief officer of the county, to summon a posse to assist him in the preservation of order and in the prevention of riot. For it cannot be doubted that the duty of a Sheriff is to prevent the danger of disorder, as well as to suppress a riot which has become flagrant and destructive." It is to be noticed, in this case, that the State claimed that the original call of the Sheriff for the posse was unnecessary, or even if justifiable, that the subsequent action, and especially the shooting on September 10th, could not be justified, under the evidence.

The pertinency of the evidence, then, as to the happenings on prior days, related to the right and duty of the Sheriff, as said by the Court, not only to suppress a riot after it became flagrant and destructive, but to prevent the danger of disorder, and the Sheriff might have been justified, from the conduct of the strikers on previous occasions, in assuming the danger of riot on the 10th of September, and taking measures to prevent such riot, before it actually reached a dangerous point, but the rights and duties of the Sheriff, as the great peace officer of the county, in the prevention of disorder, could not, by any legal conception, have been devolved upon these defendants and their associates on the morning of the 19th of January. The Sheriff was not present, and the defendants and their associates were not, in any sense, his *posse comitatus,* or under his immediate order and control. They were not charged, in any way, as citizens, with the prevention of disorder, as the Sheriff undoubtedly is.

VII.

THAT THE COURT ERRED IN CHARGING THAT ALL OF THE DEFENDANTS COULD BE HELD GUILTY, ALTHOUGH IT WAS IMPOSSIBLE TO IDENTIFY THE MAN WHO ACTUALLY FIRED THE FATAL SHOT.

The learned counsel contend that, assuming the definition of manslaughter by the trial Judge in his charge to be a correct definition, the jury were misled thereby into the belief that they might find all of the defendants guilty of manslaughter, although they should conclude, from the evidence, that the fatal shot was fired by one of the associates of the defendant, in the heat of sudden passion. On page 57 of the Brief, their position under this head is stated: That remembering the limitation of the definition of manslaughter, contained in the charge, and that it was confined to the taking of human life in the heat of passion, the jury could well have concluded, in this case, that the deceased was killed by one of the forty-five deputies who became suddenly incensed. In which event, they were justified, under the Judge's charge, in holding the defendants guilty of manslaughter. There can be no common purpose or design that one of the deputies should lose his temper and kill in the heat of passion then existing.

This, however, adroitly misstates the whole position of the State and of the Judge.

While it is true that there could be no common purpose or design that one should lose his temper and kill in the heat of passion, yet this is not the question.

The defendants and their associates having emerged from the plant in pursuance of a common, unlawful design, or, having formed such unlawful design, after emerging, they would all be responsible for the natural and immediate results of such common action and design. If the deceased was killed by one of those thus associated together, even though the killing might be the result of a sudden rush of passion, it would still be

in furtherance of the common design, and the defendants, although not firing the shot, would be equally guilty of the murder. The defendants and their associates emerging for the common purpose, unlawfully to attack and disburse this assemblage, by force of arms and bloodshed, any death occuring during the progress of such common concerted action would be the act of all thus engaged, regardless of any particular or additional motive that might also actuate the mind of the actual slayer. Unless the act of this killing can be so separated, in point of time and otherwise, from the concerted action and occurrence as to be a distinct and separate act, not naturally consequent upon and flowing from the common concerted act, it should be considered the joint act of all.

VIII.

THAT THE TRIAL JUDGE MISDIRECTED THE JURY IN HIS CHARGE WITH REFERENCE TO THE LAW OF SELF-DEFENSE.

The first contention is, under this head, that the trial Judge failed to instruct the accused that they were entitled to the benefit of reasonable doubt upon this issue of self-defense; that is, that the Judge should have instructed the jury specifically as to reasonable doubt upon this particular issue, but this is not the law. If the Court instructs the jury upon the effect of reasonable doubt, in language comprehending all the issues in the case, he is not obliged to reiterate it and apply it specifically to every such issue. *Brown* v. *State,* 62 *N. J. L.* (33 *Vroom*) 666, 715; *Warner* v. *State,* 56 *N. J. L.* (27 *Vroom*) 686, 688.

There was such an instruction to the jury in this case. The Judge says: "And so the innocence of every defendant is presumed to exist. All these defendants are presumed to be innocent until the State has overthrown that presumption beyond a reasonable doubt. * * * It is such a condition of mind that if, after

taking all the evidence, considering it carefully, giving every part of it its due weight, you still feel unconvinced of the defendant's guilt, and if you have such a reasonable doubt, then the defendant is, of course, entitled to the benefit of it." (Case, p. 1220, lines 5 to 20.)

It is also objected, under this heading, that the trial Judge failed to dwell upon the right of the defendants to rely upon their apparent danger.

While it is true that appearance of danger, as well as danger itself, is an incident to the plea of self-defense, yet it is not the person's honest belief which justifies him in repelling assault under the conditions as he sees them. His justification is not based upon such conditions, even though they be erroneous. The law is thus stated, in *Brown* v. *State, supra, at page* 709: "Justification for taking life by the use of deadly weapon results from the situation of the accused at the time the fatal wound was given. Whether his situation was such as to warrant resort to such means to protect himself from a danger actual or apprehended on reasonable grounds, and whether, before the fatal wound was given, the accused had done everything exacted by the law to avoid taking life, involve the determination of questions of fact. The accused cannot make his own judgment of the necessity of slaying the deceased his justification. The judge properly instructed the jury that whether the necessity for taking life existed must be determined from the situation of the accused at the time, and that it was the province of the jury to determine that question."

IX.

That the Trial Judge Misdirected the Jury in Connection with the Rule Governing the Defendants' Efforts to Suppress the Riot.

Under this head, it is argued that after leaving the impression that it was always better for citizens to be

accompanied by the Sheriff in the suppression of a riot, he limits the rights of the defendants in the case at hand to a situation where the provocation was sufficient to have justified the firing of a volley into the crowd. That the judge was justified in using the language he did, that it is always much wiser that a party of citizens, in suppressing a riot, should act under the direction of some officer, is abundantly shown by the authorities heretofore cited and quoted from in this Brief. He did not, however, limit the right of the defendants to a situation such as stated in the Brief. The charge of the Judge was, in effect, that the defendants and their associates were not justified in attempting to suppress this riot by the use of firearms and bloodshed, unless the evidence showed that they were acting in a case of the extremest emergency, and this is the undoubted law. As has been shown, the Judge properly refused to charge the jury that the defendants, if a riot was in progress, were justified in using arms and to shoot in endeavoring to suppress such a riot, or disperse an unlawful gathering. There was proof that the defendants did fire a volley into or towards the crowd. Their own witness, Deacon, stated that the men coming from the plant raised their guns and fired a volley over the train.

It must be remembered that the evidence shows that the main body of the rioters were, at this time, on the opposite side of the train from those coming from the plant, and the volley was fired in their direction, and it may be reasonably assumed might have caused the death of the deceased, and the injury of those proved to have been wounded. The evidence of the defendants' witness, Pyne, page 763, bottom 764, is that as the shots were fired from the front part of the train, those of the deputies who had riot guns fired up into the air; some of those who had revolvers shot into the ground, and then they charged, and as they charged he went over to the other side of the train to see what

was happening on the right-hand side. A large number of the strikers ran up the hill towards Carteret, and some of them ran up the railroad track towards East Rahway, and others ran alongside of the train.

It is important, in this case, to note that the undisputed evidence is that the deceased received four gunshot wounds in his back, one of which caused his death, and that all of the assemblage fired upon by the deputies were wounded in the back or legs.

The firing of the volley, as testified to by the defendant's witness, Deacon, into the air, was the firing, recklessly, of a volley, as stated by the Judge, and the charging and firing by these men and their associates into the crowd, as described by the witness, Pyne, was a most reckless use of firearms.

X.

The Refusal of the Court to Charge the Defendants' Twenty-fourth Request.

This request contained an assumption not warranted by the evidence, and the Judge properly refused so to charge. It assumes that the defendants were assistants to the Sheriff, and, therefore, free from the presumption of concert or combination. There was no evidence or proof that these men were assistants to the Sheriff. On the contrary, the evidence shows that they were not assistants to the Sheriff in the sense used in the charge. They were not part of the *posse comitatus* of the county. They were not under the direction or control of the Sheriff, nor had they been summoned by him for any purpose. Their status was merely that of guards at the Williams & Clark property, to protect that property from invasion or actual destruction. They had no duties and no rights outside of the plant. They were not even citizens of the State. They were straggling, masterless men, as their own testimony shows, wanderers and vagrants, totally irresponsible

and unfit for the discharge of any such grave duties, involving discretion, judgment and regard for the life and rights of others. There is no evidence, in this case, that there was or had been any attack that day upon the property of Williams & Clark; that these men were resisting in any way the unlawful aggression of the strikers upon this property. They voluntarily left the plant, and if they left it for the purpose charged by the State, they became at once themselves an unlawful assemblage, and they instituted and incited a riot.

XI.

As to the Occurrences During and Anterior to the Trial, Alleged to Have Injured the Defendants.

The action of the Supreme Court in granting a foreign jury was purely discretionary, and is not reviewable on error in this Court. The Supreme Court, in their wisdom, decided that an impartial trial, under the circumstances, could not be obtained by a jury of the county, and, therefore, properly awarded a foreign jury. This was as much for the protection of the defendants and to insure a fair and impartial trial for them, as in the interest of the proper administration of justice. The defendants suffered no wrong by this action, nor, as we have shown, were they thereby deprived of any rights of challenge. The same objections urged in this case could be raised in every case of a trial by a foreign jury, where ordered within the sound discretion of a proper tribunal.

A. As to the alleged failure of some of the jurors to hear the evidence of the defendant. (*Bavier, Brief, p. 79*).

A careful examination of the e[illegible]ice shows that the jurors did not fail to hear the wh[illegible] any considerable

part of the evidence up to this point. The third juror stated, in answer to the Court's question, whether he had not heard the evidence—"Just this last part. I said I did not believe there would be more than one-half of this witness's evidence heard." (Evidently meaning that if the witness continued his then manner of speaking, they *would* be unable to hear more than one-half of the evidence, *not* that they *had* not heard more than one-half.) The eighth juror said, "I heard most of it, excepting the last part of it." The last two questions and answers were read. This included his description of what had happened from the time he left the works until that period, and was the most important part of his evidence up to that point. Whether or not the jury heard the evidence of this witness up to that point, the witness was one of the defendants. He was testifying in his own behalf. If he did not speak sufficiently loud, it was his own fault, and he should not be permitted now to take advantage of such fault.

B. As to the remark of the Court during the evidence of Police Officer Donovan (Brief, page 80).

This language, when read in the light of the immediate circumstances, was not improper, and could not, in any way, have prejudiced the jury against the defendants. It was a remark to counsel apropos of an offer of proof, and the Court, in answer to the offer, said, in effect, "Suppose you *do* so prove, would it be any defense to the charge of the State that these deputies shot down men, without cause or reason?"

C. The testimony drawn on cross-examination, from the defendant McLaughlin, as to his being paid while in jail awaiting trial, while perhaps not directly material to the issue, could not ave prejudiced the jury to the injury of defendant was an unusual circumstance, and tended to discred eir testimony. There was no effort, on the part State, to bring into the case the

dispute between capital and labor. This is an unwarranted assertion, wholly unsupported by any evidence in the case. The question of the Attorney-General, as to the ownership of the American Chemical Company (Brief, page 82), while immaterial, was overruled, and not answered. It could not have prejudiced the defendants in a material way. If it could, then it might be argued that any improper question, unanswered, would be ground for reversal. So the question set out on page 84 of the Brief, top, was overruled and not answered.

D. The examination of the Attorney-General as to the previous experience of defendants was eminently proper, as bearing upon their credibility. The defendant Williams was asked if he had been acting as a strike-breaker. The meaning of the term "strike-breaker" is well known, and if the defendant had been habitually employed as a strike-breaker, it might affect his credibility, as showing a condition of unrest, and a roving, unsettled disposition.

In dealing with this issue, the Court will examine the record and decide as to the propriety of the conviction from the whole testimony. It seems to have been abundantly proved, certainly sufficiently to justify a jury in finding as they did, that, on the morning of the 19th of January, there was assembled, in and about the railroad station, in front of the plant, a crowd of some three or four hundred men; that some of this crowd were armed with sticks and probably with stones; that the crowd was noisy and acting in an unlawful manner; obstructions had been placed upon the railroad track to stop an expected train. This act, of course, was unlawful, and it may be conceded by the State that there was an unlawful assemblage, and it is not denied that the Sheriff, had he been present, might have commanded this assemblage to disperse, and, upon their failure, to

have used necessary means to compel obedience to his orders. The issue in the case is whether, under these circumstances, the defendants and their associates were justified in issuing from the works and acting in the manner it is abundantly proved they did act.

If these defendants were citizens, they were not justified in attempting to break up the riot, or to use force of arms, to disperse it, in the condition then prevailing. It is unquestionable, from the evidence, that the assemblage had not then reached a point where life and property were in actual danger, or such a condition as to justify citizens, without the sanction or order of express authority, in endeavoring to suppress. This being the condition, the defendants and others, to the number of thirty or thirty-five, issued from the works, armed, as appears from their own testimony, with revolvers, night-sticks and riot-guns, and proceeded to attack this assemblage without any warning. The preponderance of testimony is that these men, so coming from the works, first fired upon the assemblage; that the members of this assemblage immediately turned and ran, and were shot down while fleeing and endeavoring to escape the onslaught of these men from the works. The best evidence on this point is the evidence of the wounds. The deceased and all the men wounded were struck in the back. They could not have been resisting; they must have been in the act of fleeing. It is not conceivable that they could have been wounded, or that deceased could have been killed, by other strikers. The evidence is abundant that these defendants or their associates continued to fire after the assemblage had turned to flee. The evidence is that the firing continued for several minutes. If, then, defendants issued from these works for the purpose of attacking this assemblage, and while so attacking them and executing their purpose, shots were fired by some of these men, and the defendant killed, the law undoubtedly is that all of these defendants taking part in this act were guilty equally with

the one who fired the shot, and the verdict against the nine defendants should stand. One of the defendants, McLaughlin, denies absolutely that he left the works that morning. As to him, the evidence of his presence is the young man, Conlon, who swears, page 546, that McLaughlin was present and among those making the attack. Seven, as has already been stated, admit that they were in the body that issued from the works, although they deny shooting. The testimony of the defendants' witness Pyne, page 766, is that he saw the deputies coming alongside of the fence by the Williams & Clark works; they had turned the corner of the fence and were marching down the road; there were about thirty of them, and they came down and turned across the track; that he saw, in the hands of the deputies, clubs and revolvers, and several riot-guns. There is no evidence, whatsoever, that any of the assemblage had riot-guns that morning, but one of the witnesses testifies that he received fifty odd buck-shot in his back and legs, while running, and one of the defendants testifies that the riot-guns shoot buck-shot. Some of the defendants admit that they went out for the purpose of removing the obstructions and suppressing the riot; a number of them allege that they went out only for the purpose of meeting and escorting workmen or those employed in the Williams & Clark works, and protecting them from violence, and that they did not shoot that morning. One of them admits firing a revolver in the air three times in *self-defense*. But the whole testimony and attitude of these defendants is such as the jury were justified in not believing, and the whole evidence is such as to justify the conclusion to which the jury undoubtedly came, that these men issued from the works for the express purpose of attacking this assemblage and dispersing this alleged mob.

In this connection, the testimony of some of the defendants is worthy of note. They state that a portion of this assemblage or alleged mob came marching down the track from the direction of the Liebig works, many

of them armed with sticks and stones. At that time, the defendants and others associated with them were assembled on the platform in front of the office building and within the fence of the plant, armed with revolvers, riot-guns and night sticks; that these men, so coming down the track, called the guards on the platform scurrilous, opprobrious and insulting names, and hurled sticks and stones towards them, although they all fell short. Almost immediately afterwards, these defendants and their associates issued, as the weight of the testimony shows, armed, and the firing upon the assemblage or mob commenced.

Was not the jury justified in concluding, from this evidence, that these guards, inflamed and excited by this conduct, emerged from the works for the purpose of revenging themselves upon the mob, and not for the purpose of restoring order?

The verdict of the jury was properly rendered, and the conviction of these defendants should stand.

Respectfully submitted,

JOHN W. WESCOTT,
Attorney-General.

HERBERT BOGGS,
Assistant Attorney-General.

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(Endorsement)
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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant in Error,

vs.

JAMES BAVIER, et als,

Plaintiffs in Error.

On Error to Supreme Court.

WRIT OF ERROR.

JOSEPH E. STRICKER,

Attorney Plaintiffs' in Error,

Perth Amboy, N. J.

Filed June 9, 1915.

J. J. BERGEN,

Justice Supreme Court.

(Seal) The State of New Jersey to the Justices of the Supreme Court of the State of New Jersey:

For as much as the record and proceedings and also in the giving of judgment upon a certain indictment against James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams, for murder, which was before you in said Supreme Court, whereof the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams have been convicted by a certain jury in your County, taken between the State of New Jersey and the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams, manifest error hath intervened to the great damage of the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams, as by their complaint we are informed; we being willing that the said error, if any there be, should in due manner be corrected and that full and speedy justice be done to them, the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams in this behalf, do command you that if judgment be thereupon given then you do distinctly and openly send under your seal the record and proceedings aforesaid, including the entire record of the proceedings had upon the trial of said cause, with all things touching and concerning the same to our Judges of our Court of Errors and Appeals in the last resort in all causes at Trenton, on the twenty-eighth day of June,

nineteen hundred and fifteen, to wit, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to law ought to be done.

Witness, Edwin R. Walker, Esquire, Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, this eighth day of June, nineteen hundred and fifteen.

THOMAS F. MARTIN, Clerk.

JOSEPH C. STRICKER,

Attorney.

RETURN.

In obedience to the command of the within writ, and pursuant to Sections 136 and 137 of an act "An act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases (Revision of 1898)," the Supreme Court hereby returns the indictment against James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams, the entire record of the proceedings had upon the trial of said cause the bill of exceptions as signed and sealed by the Honorable James J. Bergen, one of the Justices of the Supreme Court who presided at the trial of the said cause, whereof mention is made within, and all things touching and concerning the same, to the Court of Errors and Appeals, within specified, at the time and place within mentioned under seal, and hereunto annexed as within commanded, as appears by the schedule hereto annexed.

WM. S. GUMMERE,

Chief Justice.

NEW JERSEY SUPREME COURT.

State of New Jersey

vs.

James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams.

JUDGMENT RECORD.

ON CERTIORARI.

ON INDICTMENT FOR MURDER OF ALESANDRO TESSITORE.

ON POSTEA.

JUDGMENT OF MANSLAUGHTER AGAINST ALL OF DEFENDANTS ABOVE STATED.

JOHN W. WESCOTT, Attorney General.

W. EDWIN FLORANCE, Prosecutor.

New Jersey, ss: The State of New Jersey sent to the Judges of our Court of Oyer and Terminer and General Jail Delivery in and for the County of Middlesex, its writ in the words following, to wit:

New Jersey, ss:

(Seal) The State of New Jersey to our Judges of our Court of Oyer and Terminer and General Jail Delivery in and for the County of Middlesex,

GREETING:

We being willing, for certain reasons, to be certified of a certain indictment before you lately found against Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James

D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Cone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, for the murder of Alesandro Tessitore as is said, to be determined before us and not elsewhere, do command you that you send, under your hands and seals, to our Justices of our Supreme Court of Judicature at Trenton on the twenty-second day of April, nineteen hundred and fifteen, all and singular the said indictment, together with all things touching and concerning the same by whatsoever names the said Harry Patterson and all the others may be named and called in the said indictment, together with this our writ, that we may further cause to be done what of right and according to law we shall see fit to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our said Supreme Court at Trenton, this twentieth day of April, one thousand nine hundred and fifteen.

WM. C. GEBHARDT, Clerk.

JOHN W. WESCOTT,
Attorney-General of New Jersey, Attorney.

(Endorsed)

2055

NEW JERSEY SUPREME COURT.

State of New Jersey,

vs.

Harry Patterson, et al.

Certiorari to Remove Indictment.

Returnable, April 22, 1915.

I allow this writ. Let it be sealed.

(Signed) J. J. BERGEN,

Justice, Supreme Court.

Filed April 22, 1915.

WM. C. GEBHARDT, Clerk.

JOHN W. WESCOTT,
Attorney General of New Jersey,
State House, Trenton, N. J.

In obedience to the command of the within writ, the indictment against Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'-Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone

Simone, Walter J. Batterson, John Mulvaney, and Frederick Livingston, for the murder of Alesandro Tessitore, together with all things touching and concerning the same whereof mention is made within, to the Justices of the Supreme Court at Trenton, within specified at the time and place within mentioned, I, James J. Bergen, Judge of the Court of Oyer and Terminer, within mentioned, under my hand and seal hereunto annexed, send, as within I am commanded.

(Signed) J. J. BERGEN,
Judge of the Court of Oyer and Terminer.

In testimony whereof, I, Bernard M. Gannon, Clerk of the Court of Oyer and Terminer of the County of Middlesex, have hereunto subscribed my name and affixed the seal of said court, this twenty-first day of April, A. D., nineteen hundred and fifteen.

(Seal) (Signed) BERNARD M. GANNON,
Clerk.

MIDDLESEX COUNTY OYER AND TERMINER.

At the session of the Oyer and Terminer holden at New Brunswick, in and for the County of Middlesex, on the second Tuesday of December, 1914.

Present, Hon. James J. Bergen, Justice of the Supreme Court. Hon. Peter F. Daly, Judge of Common Pleas.

The following twenty-two good and lawful men of the body of said county, qualified by law to serve to make the Grand Jury, in the Court aforesaid, were duly sworn:

Charles D. Snedeker, Foreman, Perth Amboy.
William Turner, Port Reading.
Eldridge C. Voorhees, New Brunswick.
Vanderbilt Voorhees, Highland Park.
Louis A. Wolfson, New Brunswick.
Thomas Grieve, Perth Amboy.
John N. Peterson, Perth Amboy.
Matthew T. Smith, Perth Amboy.
William D. Voorhees, Perth Amboy.
Albert Appleby, Old Bridge.
Charles Morris, New Brunswick.
William H. Everson, New Brunswick.
Herman Shapiro, Carteret.
John Daley, New Brunswick.
Alexander W. Pettit, New Brunswick.
Peter Klein, New Brunswick.
John J. McManus, Jr., New Brunswick.
Arthur E. Perrine, Cranbury.
William E. Foote, South Brunswick.
Charles R. Dey, New Brunswick.
William T. Ames, Woodbridge.
Harry Michaels, Perth Amboy.

Constables Abial French and Frank Cox were selected to attend the Grand Jury during its sessions.

MIDDLESEX OYER AND TERMINER COURT

December Term, 1914.

State of New Jersey, }
County of Middlesex, } ss:

It is hereby certified, that the Court of Oyer and Terminer, held at New Brunswick in and for the County of Middlesex, on the fifth day of February, in the year of our Lord one thousand nine hundred and fifteen, before the Honorable James J. Bergen, Justice of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Peter F. Daly, Judge of the Inferior Court of Common Pleas, in and for the said County of Middlesex, according to the form of the Statute in such case made and provided, by the oath of Charles D. Snedeker, William Turner, Eldridge Voorhees, Vanderbilt Voorhees, Louis A. Wolfson, Thomas Grieve, John N. Peterson, Matthew T. Smith, Wm. D. Voorhees, Albert Appleby, Charles Morris, Wm. H. Everson, Herman Shapiro, John Daley, Alexander W. Pettit, Peter Klein, John J. McManus, Jr., Arthur E. Perrine, William E. Foote, Charles R. Dey, William T. Ames, Harry Michael, good and lawful men of the County of Middlesex aforesaid, duly summoned, and then and there sworn and charged to inquire in behalf of the State of New Jersey, in and for the said County of Middlesex, it is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

CHAS. D. SNEDEKER, Foreman.

Filed, Feb. 5, 1915.

B. M. GANNON, Clerk.

MIDDLESEX OYER AND TERMINER

Of December Term, A. D. 1914.

Middlesex County, to wit:

The Grand Inquest for the State of New Jersey, and for the body of the County of Middlesex, upon their oath Present, That Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'-Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney, and Frederick Livingston, late of the Borough of Roosevelt in the said County of Middlesex, on the nineteenth day of January, in the year of our Lord one thousand nine hundred and fifteen, with force and arms, at the Borough of Roosevelt, aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did willfully, feloniously and of their malice aforethought, kill and murder one Alesandro Tessitore, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

W. EDWIN FLORANCE,

Prosecutor of the Pleas.

(Endorsed)
1438

MIDDLESEX OYER AND TERMINER.

December Term, A. D. 1914.

Indictment for Murder.

The State

vs.

Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, Frederick Livingston.

W. EDWIN FLORANCE,
Prosecutor of the Pleas.

A true bill.

CHAS. D. SNEDEKER, Foreman.

Filed Feb. 5, 1915.

B. M. GANNON, Clerk.

MIDDLESEX COUNTY COURT OF QUARTER SESSIONS.

The State of New Jersey,
vs.
Harry Patterson, et als. } Order.

No Justice of the Supreme Court being present at the Court House in the City of New Brunswick, in and for the County of Middlesex, on the fifth day of February, nineteen hundred and fifteen, and the Grand Jury in and for the said County of Middlesex, having expressed its desire to return certain indictments into Court on said day; and the Court of Quarter Sessions in and for said County having received the said indictments from said Grand Jury:

And it appearing that of the indictments so as aforesaid returned, one, to wit: the indictment charging that Harry Patterson, and others, at the Borough of Roosevelt, in the said County of Middlesex, on the nineteenth day of January, nineteen hundred and fifteen, did wilfully, feloniously and of their malice aforethought, kill and murder one Alesandro Tessitore, is not triable in the Court of Quarter Sessions of the County of Middlesex;

It is ordered that the said indictment against Harry Patterson, et als., not being triable in this Court, be and the same is hereby delivered to the Court of Oyer and Terminer in and for the County of Middlesex.

PETER F. DALY,
Judge of the Court of Quarter Sessions in and for the County of Middlesex.

Entered February 5, 1915.

Pg. 336.

February 11th, 1915.

INDICTMENT No. 1438.

The State

vs.

Harry Patterson, John Gordon Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney.

For Murder.

The above prisoners being placed at the Bar and charged upon the Indictment each entered a Plea of Not Guilty.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

The State of New Jersey vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, Frederick Livingston.	On Indictment For Murder Order.

It appearing that the defendants in the above entitled cause are entitled to twenty peremptory challenges, and to have a list of the jury delivered to them previous to their trial; and the Court being of the opinion that a greater number of jurors than forty-eight should be contained in the list require to be served on said defendants;

It is on this thirtieth day of March, 1915, ordered that the Sheriff or other proper officer, in the presence of the Judge of the Court of Quarter Sessions of the County of Middlesex or in the presence of the Clerk of said Court draw a list of sixty jurors from the general panel of jurors that may have been drawn and summoned to attend as

jurors at the April term at which said defendants are to be tried.

Let this rule be entered.

J. J. BERGEN, Judge.

Actually entered March 31st, 1915.

I, Edward F. Houghton, Sheriff of Middlesex County, do hereby certify that on the first day of April, 1915, the following sixty names were drawn by me from the duly summoned panel of Petit Jurors for the April Term of Court, 1915, in the case of State of New Jersey, vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, and Frederick Livingston, according to the statutes in such case made and provided.

32 Frank W. Jeffries	31 John C. Intemann
27 George Howley	29 William Heckheimer
39 Jacob Levenson	45 Edward McGowan
22 Edward Dolan	48 John Payton
58 Hugh Tennyson	42 Harry Marks
1 Wm. N. V. Ackerman	2 Samuel Altschuler
4 George Byrne	24 Celestin Foirter
40 Harry Leison	36 George Kuldoshes
55 Wesley G. Snedeker	44 James McClymont
57 Alexander Sutton	15 Marx Bernstein
7 Samuel Bears	46 Frank O. Nelson
43 Edward McElheaney	47 John B. Perrine
3 Walter J. Braitling	37 James M. Lanning
41 John Metlar	8 Howard Bright
34 Clifford Johnson	53 John Ruegg

5 John Breen
25 Ellsworth Gulick
13 Fred Bach
28 Fred Hart
6 William Beardsley
33 Edwin R. Jacques
9 L. R. Buckelew
10 Samuel B. Brown
11 Edward Britton
26 Richard Green
12 Isidore Brown
38 Michael Lautenberg
52 L. Rossman
49 John M. Parkinson
51 Harry F. Rappleyea
14 Augustus Blackford
50 John Prall
59 George Van Deventer
23 D. Raymond Edgar
16 V. P. Christopherson
21 Charles Deber
17 Abraham Cereghino
60 Andrew York
54 Patrick Savage
56 John Silzer
30 Jacob Hoffman
35 David Kline
18 J. Walter Clausen
19 Barrett Cohn
20 John Dahmer.

EDWARD F. HOUGHTON, Sheriff.

Filed April 1, 1915.

B. M. GANNON, Clerk.

MIDDLESEX OYER AND TERMINER.

The State of New Jersey, vs. Harry Patterson, et als., Defendants.	On Indictment for Murder of Alesandro Tessitore. Order for Severance.

On application being made therefor by the Prosecutor of the Pleas of the County of Middlesex, alleging by affidavit that the interests of justice would best be served by a severance and the trial of certain of the defendants separate and apart from those jointly indicted with them:

It is therefore, on this third day of April, A. D., nineteen hundred and fifteen, ordered that the application be granted and that a severance of the indictment be allowed; and that the following named defendants, to wit: James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John C. Smith be tried separately and apart from the other persons jointly indicted with them, for the murder of Alesandro Tessitore.

J. J. BERGEN,
Justice Supreme Court.

Actually entered April 5th, 1915.

(Endorsed)

MIDDLESEX OYER AND TERMINER.

The State of New Jersey
vs.
Harry Patterson, et als.,
Defendants.

On Indictment for Murder of Alesandro Tessitore.

Order for Severance.

W. EDWIN FLORANCE,
Prosecutor of the Pleas.

Filed April 5, 1915.

B. M. GANNON, Clerk.

State of New Jersey, }
County of Middlesx, } ss:

I, Bernard M. Gannon, Clerk of the County of Middlesex, do hereby certify that the foregoing are true copies of the Minutes of the Middlesex County Court of Oyer and Terminer, as the same are on record, or on file in my office, in so far as they relate to or concern the case of the State vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney, and Frederick Livingston, for the murder of Alesandro Tessitore.

(Seal) In testimony whereof, I have hereunto set my hand and affixed the seal of said County, this twenty-first day of April, A. D., 1915.

(Signed) BERNARD M. GANNON, Clerk.

NEW JERSEY SUPREME COURT.

State of New Jersey, vs. Robert J. Wallace, et al.	On Certiorari Indictment for Murder of Alesandro Tessitore. On Motion for a Foreign Jury. Order

This matter coming on to be heard in the presence of John W. Wescott, Attorney-General of the State of New Jersey, and Joseph E. Stricker and Robert H. McCarter, Attorneys and of Counsel for the defendants above named, the Court having examined the affidavits and proofs submitted, and having heard the arguments of counsel, as well for the defendants as for the State, and it appearing to the Court that a fair and impartial trial of the above mentioned indictment found by the Grand Inquest of the County of Middlesex cannot be had before a jury selected from the County of Middlesex, it is, on motion of John W. Wescott, Attorney-General made, in behalf of the State, in open Court, Ordered that the above mentioned indictment shall be tried before a Foreign Jury, drawn from the County of Mercer, and that a venire shall be directed to the Sheriff of the County of Mercer, for the summoning of one hundred jurors from the body of the County of Mercer, said jurors to be selected in the same manner as the general panel of jurors of said County of Mercer is now selected, and to be such as are competent jurors for the said County of Mercer, which said venire shall be returnable to the Circuit Court of the County of Middlesex.

It is further ordered that the said cause be re-

tained in this Court to be carried down for trial of the issue joined therein at the Middlesex County Circuit before such Justice of the Supreme Court as shall hold such Circuit, and that Monday the twenty-fourth day of May, nineteen hundred and fifteen be fixed for the trial of said issue subject to the right of the said Justice holding said Circuit to postpone said trial.

Entered May 11, 1915.

By the Court,
F. J. SWAYZE, Judge.

On motion of
JOHN W. WESCOTT, Attorney-General.

2055
(Endorsement)

NEW JERSEY SUPREME COURT

State of New Jersey
vs.
Robert J. Wallace et. al.

On Indictment, etc.
Venire

Let this Writ issue May 13th, 1915
By the Court
F. J. SWAYZE, Justice

Filed, June 9th, 1915.

WM. C. GEBHARDT,
Clerk.

(Endorsed)
6841

NEW JERSEY SUPREME COURT.

State of New Jersey
vs.
Robert J. Wallace, et al.
On Certiorari.

Indictment for the murder of Alesandro Tessitore.

On motion for a foreign jury .

Order.

Filed May 11, 1915.

WM. C. GEBHARDT, Clerk.

JOHN W. WESCOTT,
Attorney General of New Jersey,
State House, Trenton, N. J.

Afterwards, to wit, on the twenty-fourth day of May, in the year of our Lord, one thousand nine hundred and fifteen, at a Circuit Court holden at New Brunswick, in and for the County of Middlesex, aforesaid, before the Honorable James J. Bergen, one of the Justices of the Supreme Court of the State of New Jersey, come as well the State of New Jersey, by John W. Wescott, Attorney-General, and by W. Edwin Florance, Prosecutor of the Pleas in and for the County of Middlesex as the within named James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John Smith under the custody of Edward F. Houghton, Esquire, Sheriff of said County, and the jurors of the jury, whereof mention is within made, being selected and summoned from the body of the County of Mercer in

the manner directed by law and by the order of this court also come, who to speak the truth of the matters within contained being chosen, tried and sworn, and thereupon the trial of said issue commenced before the said court and jury at New Brunswick, aforesaid, the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John Smith being tried separate and apart from the other defendants in said indictment named, pursuant to an Order of Severance;

And the said jurors say upon their oath that the said John Smith is not guilty of the premises in the within indictment named and specified in the manner and form as by the said indictment is charged against him, and the said jurors say further upon their oath that the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams are, and each of them is guilty of the premises of the within indictment named and specified of the crime of manslaughter, in the manner and form as by the said indictment is charged against them and each of them;

And thereupon the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams were each committed to the custody of the said Edward F. Houghton, Sheriff of the said County aforesaid, to await the further order of the Supreme Court as to the time and place at which the said James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams shall be produced in their proper persons before said Court

to receive the judgment of said Court on said indictment and conviction, etc.

J. J. BERGEN,
Justice Supreme Court.

Wherefore the said defendants, James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams being set to the Bar of the said Supreme Court, it is on this seventh day of June, one thousand nine hundred and fifteen, judgment being moved against the said defendants by W. E. Florance, Prosecutor of the Pleas of the County of Middlesex, who prosecutes in this behalf for the state, considered and adjudged that each of the said defenants are guilty of the crime of manslaughter in manner and form as they are in the aforesaid indictment charged, and that as a punishment for the said crime of manslaughter, the sentence and judgment of the court is that each of said defendants be imprisoned at hard labor in the state prison of this state for a term of, not more than ten years, nor less than two years, and it is further adjudged that the said defendant John Smith be and he is acquitted of the premises in the within indictment named and specified in the manner and form as by the said idictment is charged against him.

Entered June 7, 1915.

By the Supreme Court.

J. J. BERGEN,
Justice Supreme Court.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judg-

ment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and seal of said Court at
(Seal) Trenton, this sixteenth day of June, A. D., nineteen hundred and fifteen.

WM. C. GEBHARDT, Clerk.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
Chief Justice.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

The State, vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, Frederick Livingston.	On Indictment for Murder Notice.

Sir: –

Take notice that on the third day of April, 1915, at the Court House in Elizabeth, I shall make application to the Honorable James J. Bergen, of the Middlesex Court of Oyer and Terminer, for an order directing a severance in the above entitled action, and further directing that the defendants, James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John C. Smith be tried separately and apart from the other persons who were joint-

ly indicted with them for the murder of Alesandro Tessitore.

Yours truly,

W. EDWIN FLORANCE,
Prosecutor of the Pleas.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

The State of New Jersey, vs. Harry Patterson, et als., Defendants.	On Indictment For Murder.

Affidavit.

County of Middlesex, }
State of New Jersey, } ss:

W. Edwin Florance, of full age, being duly sworn on his oath says that he is the Prosecutor of the Pleas of the County of Middlesex.

That he has carefully prepared the case of the State vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, indicted for murder of Alesandro Tessitore. That from a careful examination of the case and the proof therein he is convinced that the interests of justice will be best served by granting a severance, and by trying the following named defendants, to wit: James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John C. Smith separately and apart from the other persons who

were jointly indicted with them for the murder of Alesandro Tessitore.

W. EDWIN FLORANCE.

Sworn to and subscribed before
me this first day of April, 1915.

JOSEPH P. LANIGAN,

Notary Public of N. J.

MIDDLESEX OYER AND TERMINER.

The State of New Jersey, vs. Harry Patterson, et als.,	On Indictment for Murder of Alesandro Tessitore.

Order of Severance.

On application being made therefor by the Prosecutor of the Pleas of the County of Middlesex, alleging by affidavit that the interests of justice would be best served by a severance and the trial of certain of the defendants separate and apart from those jointly indicted with them; it is therefore on this third day of April, A. D., nineteen hundred and fifteen, ordered that the application be granted and that a severance of the indictment be allowed; and that the following named defendants, to wit, James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John Smith, be tried separately and apart from the other persons jointly indicted with them for the murder of Alesandro Tessitore.

J. J. BERGEN,
Justice Supreme Court.

6841
(Endorsement)

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictments found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori and Kalman Batyi.

PETITION.

Filed, April 9, 1915.

WM. C. GEBHARDT, Clerk.

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex, for the murder of Alesandro Tessitori.

PETITION.

To His Honor, James J. Bergen, one of the Justices of the Supreme Court of the State of New Jersey:

Your petitioner, John W. Wescott, Attorney General of the State of New Jersey, respectfully petitions this Court for the selection of a foreign jury, in accordance with the provisions of the seventy-eighth section of the Criminal Procedure Act, (Comp. Stat.) (Vol. 2, page 1845), which reads as follows:

> "The Supreme Court may, in its discretion, order trials by foreign juries in all criminal cases which may have been commenced in that court, or may be removed to that court from any other court, and whenever in their opinion a fair and impartial trial cannot be had before a jury of the proper county, may, upon motion in behalf of the State, or on the part of any defendant, order an indictment, found at any court of Oyer and Terminer, or at any court of quarter sessions, to be tried by a foreign jury in the court and

county in which such indictment was found.''

Your petitioner represents to this Court that the panel of jurors drawn for the April term of the Middlesex County Court of Oyer and Terminer was selected by the Sheriff of the County of Middlesex and the Jury Commissioner of such county appointed by the Chancellor of this State in accordance with the provisions of an act entitled, ''A Supplement to an act entitled 'An Act concerning juries' (Revision) approved March twenty-seventh, one thousand eight hundred and seventy four,' approved May twenty-ninth, one thousand nine hundred and thirteen.''

That in accordance with the provisions of section seven of said act, the said Sheriff and the said Jury Commissioner did draw the panel of petit jurors for the April term of such Court of Oyer and Terminer holden in and for such County of Middlesex.

Your petitioner further represents to Your Honor that by reason of an interest which the Sheriff of the County of Middlesex has in the trial of these indictments and which is hereafter referred to, he is incompetent to draw such panel of jurors, and offer in support of such allegation the following facts:

Your Honor in his charge to Grand Jury of Middlesex County on February 2d, 1915, said in part:

> ''The next step was that the Sheriff appointed a number of persons as, what he calls, 'deputies' and I understand that they were sworn as 'deputies.' These men it is charged, fired some pistols or shot guns into this crowd, so as to kill two people. If they did that without any justification, then it is your duty to in-

dict them for murder and let the trial court and the trial jury settle the question of whether they are guilty at all, or the grade of the offense.

"The Sheriff, under the law of this State, has no express authority to appoint any deputies, except a general deputy * * * * so far as I can see there is no authority under the law existing in New Jersey for the Sheriff to appoint what he calls special deputies, and the exercise of that power, the appointment of persons at least, who are not residents of the county * * * * is not only to be deprecated as against public policy, but it is in exact violation of the law of the State."

Your petitioner therefore represents that the appointment of these deputies by the Sheriff of the County of Middlesex was an exact violation of the law of the State, as laid down in the charge of your Honor and that the commission of such unlawful act disqualifies the said Sheriff to participate in the drawing of a Jury which is to try these defendants.

Your petitioner further believes that it is impossible to obtain a fair and impartial trial before any panel of jurors selected in the manner aforesaid and further believes that a fair and impartial trial cannot be had in such county, and therefore in accordance with the statute in such case made and provided, petitions your Honor for a foreign jury to try the indictments found by the Grand Inquest of the County of Middlesex against Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Harry Tone, John O'Mara, James Bavier, William McLaughlin, John C. Moran and John Smith.

And your petitioner prays that a venire do issue to the Sheriff of the County of Mercer directing him to return a panel of one hundred men from which a jury may be selected for the trial of these indictments in accordance with the statutes in such case made and provided.

And your petitioner will ever pray, etc.

JOHN W. WESCOTT,

Attorney General of the State of New Jersey.
Petitioner.

State of New Jersey, }
County of Mercer, } ss:

John W. Wescott, Attorney-General of the State of New Jersey, being duly sworn according to law, on his oath says that I am the petitioner in the above entitled matter, and that the matters and things contained in the above petition are true to the best of my knowledge and belief.

JOHN W. WESCOTT,

Sworn and subscribed before me
this third day of April, nineteen
hundred and fifteen.

JOHN A COAN,
Master in Chancery of New Jersey.

(Endorsement)
6841

SUPREME COURT OF NEW JERSEY.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori.

ORDER FOR A FOREIGN JURY.

Filed April 9, 1915.

WM. C. GEBHARDT, Clerk.

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori.

Order for a Foreign Jury.

An application having been made to this court by John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury in the trial of a certain indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori, and the ground of said application being that the petitioner believes that a fair and impartial trial cannot be had in such County before a jury selected from the body of said County of Middlesex; and the argument of the Attorney-General and of Joseph E. Stricker, Esquire, of counsel for defendants, having been heard thereon and considered, and the court being of the opinion that a fair and impartial trial of said defendants, cannot, at this time, be had before a jury of the said County of Middlesex, does hereby order and direct that a foreign jury to try the said indictment, above referred to, be selected by the Sheriff of the County of Mercer; that the said Sheriff of the County of Mercer shall select said jurors to the number of one hundred from the body of the County of Mercer, in the same manner as the general panel of jurors is selected, and the said jurors shall be such as are competent

jurors in and for the County of Mercer, and for that purpose a venire do issue to the Sheriff of the County of Mercer, returnable to the Court of Oyer and Terminer of the County of Middlesex upon such day as shall be fixed by the said court for that purpose in accordance with the statute in such case made and provided.

J. J. BERGEN,

Justice of the Supreme Court.

Dated April 6th, 1915.

(Endorsement)
6841

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alexandro Tessitori.

ON INDICTMENT.
PETITION AND NOTICE.

JOSEPH E. STRICKER,

Attorney for Petitioners, Perth Amboy, N. J.

Filed April 19, 1915.

WM. C. GEBHARDT, Clerk.

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alexandro Tessitori.	On Indictment. Notice.

Please take notice that on Thursday, the fifteenth day of April, nineteen hundred and fifteen, at 10.30 o'clock in the forenoon or as soon thereafter as counsel can be heard, I shall apply to the Supreme Court at the State House in the City of Trenton, for a rule to vacate the order for a foreign jury made by the Honorable James J. Bergen, the Justice of the Supreme Court presiding in Middlesex County, dated April 6th, 1915, and that at the same time I will read the verified petition hereto annexed.

Dated, April 13th, 1915.

Yours respectfully,

JOSEPH E. STRICKER,
Attorney for Petitioners.

To Hon. John W. Wescott,
Attorney-General State of New Jersey.

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori.	On Indictment. Petition to Vacate Order For Foreign Jury.

The petition of Harry Patterson, James Bavier, Walter J. Batterson, Walter Bedell, Alexander Brummer, Wm. Erving, Edward Gillen, Harry Gilmour, John Gordon, Michael Manning, William McLaughlin, John C. Moran, Fred Mullen, John Mulvaney, Thomas Murphy, Frank J. Rick, Tony Simone, Carl Smith, John Smith, Harry H. Terrill, H. C. Tiler, Harry Tone, Robert F. Wallace and John Williams respectfully shows:

1. That they are under indictment for murder, charged with the killing of Alesandro Tessitore and Kalman Batyi, and are incarcerated in the County Jail of Middlesex County, where they have been since the 19th day of January last.

2. They were arrested on the 19th day of January upon the charge of manslaughter and released upon giving bail of two thousand dollars ($2,000) each; they were re-arrested on the 21st day of January upon the charge of murder and have been in custody ever since.

3. The trial of the indictments was set by the Honorable James J. Bergen, the Justice of the Supreme Court, presiding in Middlesex County, for the sixth day of April and preparations were

made by the counsel of your petitioners for the trial at that time, and your petitioners were ready for such trial at that time.

4. Your petitioner further shows that a panel of sixty jurymen was regularly drawn for the April Term, at which this trial was to take place, by the Sheriff of said County, together with the Jury Commissioner and in the presence of the Honorable Peter F. Daly, Judge of the Court of Quarter Sessions, as required by law, on the 24th day of March, 1915; and that the panel of forty-eight which was to have tried your petitioners was selected therefrom in the presence of the said Judge, as required by law, on the 26th day of March, 1915.

5. That at five-thirty o'clock on Thursday, the first day of April, 1915, a petition and notice, a copy whereof is hereto annexed, was left at the office of Joseph E. Stricker, Esquire, of counsel for the petitioners, in the City of Perth Amboy, giving notice that an application would be made before the Honorable James J. Bergen, at the City of Elizabeth, on Saturday morning, April 3rd, at ten-thirty o'clock, as in said notice and petition provided.

6. Upon the hearing of said motion on Saturday, April 3rd, the counsel of your petitioners appeared and resisted the same. Notwithstanding much opposition an order was signed by the Honorable James J. Bergen, a copy of which order is hereto annexed and marked Schedule B. and made a part hereof, directing that a foreign jury be impanelled by the Sheriff of Mercer County, as prayed for in said petition.

7. That on Monday, the 5th day of April, 1915, the Attorney-General's office notified Joseph E. Stricker, Esquire, counsel for the defendants, that Mr. Justice Bergen had expressed some doubt as

to the propriety in making the order for the foreign jury in the manner aforesaid, and that he had suggested to the Attorney-General that application be made to a branch of the Supreme Court which is to convene at the State House in the City of Trenton on the 15th instant. That such suggestion had been accepted by the Attorney-General and that application would be made to the said branch on the date aforesaid for an order for a foreign jury, and that the order made by Mr. Justice Bergen on April 3rd would be abandoned.

8. That on the 10th day of April, 1915, said Joseph E. Stricker, Esquire, received a letter from the Attorney-General's office, a copy whereof is hereto annexed and marked Schedule C. That no notice of any application nor a petition has been received to this date by the said Joseph E. Stricker, Esq. That this morning (April 12, 1915) said Joseph E. Stricker was informed by the Assistant Prosecutor of the Pleas of Middlesex County, John A. Coan, Esquire, that he was requested to announce on behalf of the Attorney-General that the application to the Supreme Court would not be made on the 15th instant, but on the 22nd instant.

9. That in the present condition of things the order as made by Justice Bergen on the 9th day of April, 1915, still stands, having been signed on the 6th day of April, 1915, and filed in the Supreme Court on the 9th day of April, 1915.

10. Your petitioners allege that they are aggrieved by said order in that the same was, as they allege in providently and illegally granted, and they pray that the same shall be vacated, nullified and set aside for the following reasons, namely:

1. The State has had all the time necessary since the indictments were returned to properly make this application if occasion therefor existed.

Instead of doing so they waited until the jury, impaneled both for the Trial Term of 1915 of the Middlesex Courts and for the trial of these indictments, had been selected.

2. The said Justice had no power or authority to make the order.

3. If such power or authority existed in said Justice, no facts or circumstances were shown or existed justifying the making of the same.

4. Your petitioners are greatly prejudiced by the said order in the preservation of their rights in that the number of peremptory challenges that your petitioners will have to a foreign jury is greatly reduced.

5. The selection of the Sheriff of Mercer County to summon the jury was, under the circumstances, improper and unfair.

6. The order in question providing for the selection of the foreign jury by the Sheriff alone is prejudicial and unfair to your petitioners because it ignors the provisions of Chapter twenty of the Laws of 1913, providing for the selection of petit jurors by both the Sheriff and Commissioner in each County and by lot.

7. Because the said order directs that a venire do issue to the Sheriff of the County of Mercer, returnable to the Court of Oyer and Terminer of the County of Middlesex, which is in violation of the ninth section of the Criminal Procedure Act, which provides that such venire shall be returnable to the Circuit Court in which the issue is triable.

And your petitioners, as in duty bound, will ever pray, etc.

JOSEPH E. STRICKER,

Attorney for Defendants.

State of New Jersey, }
County of Middlesex, } ss:

Joseph E. Stricker, being duly sworn on his oath deposes and says: I am the counsel of the petitioners within named and have been such ever since their indictment. I am familiar with the facts stated in the foregoing petition and the same are correctly therein set forth.

JOSEPH E. STRICKER,

Sworn to and subscribed before
me, this 13th day of April, 1915.

HYMAN FRIEDMAN,

Notary Public New Jersey.

SCHEDULE "A".

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury in the trial of the indictments found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitore and Kalman Batyi.	Notice of Application.

To Joseph E. Stricker, Attorney for Defendants.

TAKE NOTICE that I shall apply to his Honor, James J. Bergen, one of the Justices of the Supreme Court of the State of New Jersey, on Saturday, the third day of April, instant, at ten thirty o'clock in the morning of said day, or as soon thereafter as he can hear the same, for a foreign jury to try the indictments found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitore and Kalman Batyi. This application will be made to the Justice at his chambers at the Court House in the City of Elizabeth, New Jersey.

Very truly yours,

JOHN W. WESCOTT,
Attorney-General.

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney-General of the State of New Jersey, for a foreign jury, in the trial of the indictments found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitore and Kalman Batyi.	Petition.

To His Honor, James J. Bergen, one of the Justices of the Supreme Court of the State of New Jersey:

Your petitioner, John W. Wescott, Attorney-General of the State of New Jersey, respectfully petitions this Court for the selection of a foreign jury, in accordance with the provisions of the seventy-eighth section of the Criminal Procedure Act (Comp. Stat. Vol. 2, page 1845), which reads as follows:

> "The Supreme Court may, in its discretion, order trials by foreign juries in all criminal cases which may have been commenced in that Court, or may be removed to that Court from any other Court, and whenever in their opinion a fair and impartial trial cannot be had before a jury of the proper county, may, upon motion in behalf of the State, or on the part of any defendant, order an indictment, found at any Court of Oyer and Terminer, or at any Court of Quarter Sessions, to be tried by a foreign jury in the Court and County in which such indictment was found."

Your petitioner represents to this Court that the panel of jurors drawn for the April Term of the Middlesex County Court of Oyer and Terminer was selected by the Sheriff of the County of Middlesex and the Jury Commissioner of such County appointed by the Chancellor of this State in accordance with the provisions of an act entitled "A supplement to an act entitled 'An act concerning juries' (Revision) approved March twenty-seventh, one thousand eight hundred and seventy-four," approved May twenty-ninth, one thousand nine hundred and thirteen."

That in accordance with the provisions of section seven of said act, the said Sheriff and the said Jury Commissioner did draw the panel of petit jurors for the April term of such Court of Oyer and Terminer holden in and for such County of Middlesex.

Your petitioner further represents to Your Honor that by reason of an interest which the Sheriff of the County of Middlesex has in the trial of these indictments and which is hereafter referred to, he is incompetent to draw such panel of jurors, and offer in support of such allegation the following facts:

Your Honor in his charge to Grand Jury of Middlesex County on February 2d, 1915, said in part:

> "The next step was that the Sheriff appointed a number of persons, as what he calls 'deputies,' and I understand that they were sworn as 'deputies.' These men it is charged, fired some pistols or shot guns into this crowd, so as to kill two people. If they did that without any justification, then it is your duty to indict them for murder and let the trial court and the trial jury settle the question

of whether they are guilty at all, or the grade of the offense.

"The Sheriff, under the law of this State, has no express authority to appoint any deputies, except a general deputy * * * * * * * so far as I can see there is no authority under the law existing in New Jersey for the Sheriff to appoint what he calls special deputies, and the exercise of that power, the appointment of persons at least, who are not residents of the County * * * * is not only to be deprecated as against public policy, but it is in exact violation of the law of the State."

Your petitioner therefore represents that the appointment of these deputies by the Sheriff of the County of Middlesex was an exact violation of the law of the State, as laid down in the charge of your Honor and that the commission of such unlawful act disqualifies the said Sheriff to participate in the drawing of a Jury which is to try these defendants.

Your petitioner further believes that it is impossible to obtain a fair and impartial trial before any panel of jurors selected in the manner aforesaid and further believes that a fair and impartial trial cannot be had in such County, and therefore, in accordance with the statute in such case made and provided, petitions your Honor for a foreign jury to try the indictments found by the Grand Inquest of the County of Middlesex against Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Irving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Be-

dell, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, Frederick Livingston, John C. Moran and John Smith.

And your petitioner prays that a venire do issue to the Sheriff of the County of Mercer directing him to return a panel of one hundred men from which a jury may be selected for the trial of these indictments in accordance with the statutes in such case made and provided.

JOHN W. WESCOTT,

Attorney General of the State of New Jersey.

SCHEDULE "B".

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the Murder of Alesandro Tessitori.	Order for a Foreign Jury.

An application having been made to this Court by John W. Wescott, Attorney General of the State of New Jersey, for a foreign jury in the trial of a certain indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori, and the ground of said application being that the petitioner believes that a fair and impartial trial cannot be had in such County before a jury selected from the body of said County of Middlesex; and the argument of the Attorney-General and of Joseph E. Stricker, Esquire, of counsel for defendants, having been heard thereon and considered, and the court being of the opinion that a fair and impartial trial of said defendants, cannot, at this time, be had before a jury of the said County of Middlesex, does hereby order and direct that a foreign jury to try the said indictment, above referred to, be selected by the Sheriff of the County of Mercer shall select said jurors to the number of one hundred from the body of the County of Mercer, in the same manner as the general panel of jurors is selected, and the said jurors shall be such as are competent

jurors in and for the County of Mercer, and for that purpose a venire do issue to the Sheriff of the County of Mercer, returnable to the Court of Oyer and Terminer of the County of Middlesex upon such day as shall be fixed by the said Court for that purpose in accordance with the statute in such case made and provided.

JAMES J. BERGEN,

Justice of the Supreme Court.

Dated, April 6th, 1915.

SCEDULE "C".

STATE OF NEW JERSEY.

Office of the Attorney-General.

Trenton, April 9, 1915.

Hon. Joseph E. Stricker,
Counsellor-at-Law,
Perth Amboy, N. J.

Dear Mr. Stricker:—

I enclose herewith copy of order signed by Mr. Justice Bergen in the matter of the application for a foreign jury, which application he allowed on Saturday last. With regard to the new application, which is set for Thursday, the fifteenth day of April, at the State House, the notice of application, together with a copy of the petition which will be presented at that time, will be forwarded to you tomorrow by Mr. Florance.

Very truly yours,

JOSEPH LANIGAN.

NEW JERSEY SUPREME COURT.

In the matter of the application of John W. Wescott, Attorney General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitori.	On Indictment. Affidavit of Service.

State of New Jersey, }
County of Middlesex, } ss:

Louis Y. Sosin, of full age, being duly sworn according to law upon his oath deposes and says that he served a true copy of the annexed notice and petition in the above entitled matter upon Theodore Backes, Assistant Attorney-General of the State of New Jersey, at the Attorney-General's office in the State House in the City of Trenton, in the County of Mercer, and State of New Jersey, on the thirteenth day of April, nineteen hundred and fifteen, by handing the same to him personally.

LOUIS Y. SOSIN.

Sworn and subscribed to before me
this 14th day of April, A. D., 1915.
HYMAN FRIEDMAN,
Notary Public, New Jersey.

(Endorsement)

6841

NEW JERSEY SUPREME COURT

In the matter of the application of John W. Wescott, Attorney General of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitore and Kalman Bayti.

On Indictment.

ORDER.

Filed April 19, 1915.

WILLIAM C. GEBHARDT,

Clerk.

NEW JERSEY SUPREME COURT

In the matter of the application of John W. Wescott, Attorney General of the State of New Jersey, for a foreign jury, in the trial of the indictment found by the Grand Inquest of the County of Middlesex for the murder of Alesandro Tessitore and Kalman Bayti.	On indictment. Rule vacating order for foreign jury.

It appearing to the Court that an order heretofore signed by the Honorable James J. Bergen, one of the Justices of this Court, dated April 6th, 1915, and filed April 9th, 1915, ordering that a foreign jury be drawn by the Sheriff of Mercer County empaneling one hundred jurors to try two certain indictments pending in the Middlesex Oyer and Terminer for the murder of Alesandro Tessitore and Kalman Bayti; and it further appearing that the Attorney General has abandoned that application for said foreign jury;

It is, on this 19th day of April, 1915, on motion of Joseph E. Stricker, attorney for the defendants, and in the presence of John W. Wescott, Attorney General of the State of New Jersey, ORDERED, that the order for said foreign jury be vacated.

We consent to the entry of the above rule.

JOSEPH E. STRICKER,

Attorney for Harry Patterson et. al., defendants.

JOHN W. WESCOTT,

Attorney for the State of New Jersey.

(Endorsement)
1438

MIDDLESEX OYER AND TERMINER

December Term, A. D. 1914.

Indictment for Murder

The State,

vs.

Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Morgan, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, Frederick Livingston.

W. EDWIN FLORANCE,
Prosecutor of the Pleas.

A true bill.

CHARLES D. SNEDEKER,
Foreman.

Filed February 5, 1915.

B. M. GANNON,
Clerk.

MIDDLESEX COUNTY OYER AND TERMINER.

At the session of the Oyer and Terminer holden at New Brunswick, in and for the County of Middlesex, on the second Tuesday of December, 1914.

Present: Hon. James J. Bergen, Justice of the Supreme Court; Hon. Peter F. Daly, Judge of Common Pleas.

The following twenty-two good and lawful men of the body of said county, qualified by law to serve to make the Grand Jury, in the court aforesaid, were duly sworn:

Charles D. Snedeker, foreman, Perth Amboy.
William Turner, Port Reading.
Eldridge C. Voorhees, New Brunswick.
Vanderbilt Voorhees, Highland Park.
Louis A. Wolfson, New Brunswick.
Thomas Greive, Perth Amboy.
John N. Peterson, Perth Amboy.
Matthew T. Smith, Perth Amboy.
William D. Voorhees, Perth Amboy.
Albert Appleby, Old Bridge.
Charles Morris, New Brunswick.
William H. Everson, New Brunswick.
Herman Shapiro, Carteret.
John Daley, New Brunswick.
John Daley, New Brunswick.
Alexander W. Pettit, New Brunswick.
Peter Klein, New Brunswick.
John J. McManus, Jr., New Brunswick.
Arthur E. Perrine, Cranbury.
William E. Foote, South Brunswick.
Charles R. Dey, New Brunswick.
William T. Ames, Woodbridge.
Harry Michaels, Perth Amboy.

Constables Abial French and Frank Cox were selected to attend the Grand Jury during its sessions.

MIDDLESEX OYER AND TERMINER COURT.

December Term, 1914.

State of New Jersey, County of Middlesex, ss:

It is hereby certified, that the Court of Oyer and Terminer, held at New Brunswick in and for the County of Middlesex, on the fifth day of February, in the year of Our Lord one thousand nine hundred and fifteen, before the Hon. James J. Bergen, Justice of the Supreme Court, of Judicature of the State of New Jersey, and the Hon. Peter F. Daly, Judge of the Inferior Court of Common Pleas, in and for the said County of Middlesex, according to the form of the Statute in such case made and provided, by the oath of Charles D. Snedeker, William Turner, Eldridge Voorhees, Vanderbilt Voorhees, Louis A. Wolfson, Thomas Grieve, John N. Peterson, Matthew T. Smith, Wm. D. Voorhees, Albert Appleby, Charles Morris, Wm. H. Everson, Herman Shapiro, John Daly, Alexander W. Pettit, Peter Klein, John J. McManus, Jr., Arthur E. Perrine, William E. Foote, Charles R. Dey, William T. Ames, Harry Michael, good and lawful men of the County of Middlesex aforesaid, duly summoned, and then and there sworn and charged to inquire in behalf of the State of New Jersey, in and for the said County of Middlesex, it is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

CHARLES D. SNEDEKER,
Foreman.

Filed February 5, 1915.

B. M. GANNON,
Clerk.

MIDDLESEX OYER AND TERMINER

December Term, A. D. 1914.

Middlesex County, to wit:

THE GRAND INQUEST for the State of New Jersey, and for the body of the County of Middlesex, upon their oath PRESENT, That Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney, and Frederick Livingston, late of the Borough of Roosevelt in the said County of Middlesex, on the nineteenth day of January, in the year of our Lord one thousand nine hundred and fifteen, with force and arms, at the Borough of Roosevelt aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did willfully, feloniously and of their malice aforethought, kill and murder one Alesandro Tessitore, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

W. EDWIN FLORANCE,

Prosecutor of the Pleas.

(Endorsement)

MIDDLESEX OYER AND TERMINER

The State of New Jersey

vs.

Harry Patterson et. als., Defendants

On Indictment for Murder of
Alesandro Tessitore

Order for Severance

W. EDWIN FLORANCE,
Prosecutor of the Pleas.

Filed April 5th, 1915

B. M. GANNON, Clerk.

MIDDLESEX COUNTY COURT OF QUARTER SESSIONS

The State of New Jersey vs. Harry Patterson et. als.	Order.

No Justice of the Supreme Court being present at the Court House in the City of New Brunswick, in and for the County of Middlesex, on the fifth day of February, nineteen hundred and fifteen; and the Grand Jury in and for the said County of Middlesex, having expressed its desire to return certain indictments into Court on said day; and the Court of Quarter Sessions in and for said County having received the said indictments from said Grand Jury;

And it appearing that of the indictments so as aforesaid returned, one, to wit: the indictment charging that Harry Patterson, and others, at the Borough of Roosevelt, in the said County of Middlesex, on the nineteenth day of January, nineteen hundred and fifteen, did wilfully, feloniously and of their malice aforethought, kill and murder one Alesandro Tessitore, is not triable in the Court of Quarter Sessions of the County of Middlesex:

It is ordered that the said indictment against Harry Patterson et. als., not being triable in this Court, be and the same is hereby delivered to the Court of Oyer and Terminer in and for the County of Middlesex.

PETER F. DALY,

Judge of the Court of Quarter Sessions and for the County of Middlesex.

Entered February 5, 1915.

(page 336.)

February 11th, 1915.

Alesandro Tessitore

Indictment No. 1438

The State, vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney.	For Murder.

The above prisoners being placed at the Bar and charged upon the Indictment each entered a plea of not guilty.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER

The State of New Jersey vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Henry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney, Frederick Livingston.	On indictment for murder. Order.

It appearing that the defendants in the above entitled cause are entitled to twenty peremptory challenges, and to have a list of the jury delivered to them previous to their trial; and the Court being of the opinion that a greater number of jurors than forty-eight should be contained in the list required to be served on said defendants.

It is on this thirtieth day of March, 1915, ordered that the Sheriff or other proper officer, in the presence of the Judge of the Court of Quarter Sessions of the County of Middlesex or in the presence of the Clerk of said Court draw a list of sixty jurors from the general panel of jurors that may have been drawn and summoned to attend as jurors at the April Term of the Middle-

sex Court of Oyer and Terminer, being the term at which said defendants are to be tried.

Let this rule be entered.

J. J. BERGEN,

Judge.

Actually entered March 31st, 1915.

I, Edward F. Houghton, Sheriff of Middlesex County, do hereby certify that on the first day of April, 1915, the following sixty names were drawn by me from the duly summoned panel of Petit Jurors for the April Term of Court, 1915, in the case of State of New Jersey vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Marra, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston. According to the Statutes in such case made and provided.

32 Frank W. Jefferies,	31 John C. Intemann,
27 George Howley,	29 William Heckheimer,
39 Jacob Levenson,	45 Edward McGowan,
22 Edward Dolan,	48 John Payton,
58 Hugh Tennyson,	42 Harry Marks,
1 Wm. N. V. Ackerman,	2 Samuel Altschuler,
4 George Byrne,	24 Celestin Foirter,
40 Harry Leison,	36 George Kuldoshes,
55 Wesley G. Snedeker,	44 James McClymont,
57 Alexander Sutton,	15 Marx Bernstein,
7 Samuel Bears,	46 Frank O. Nelson,
43 Edward McElheaney,	47 John B. Perrine,
3 Walter J. Braitling,	37 James M. Lanning,
41 John Metlar,	8 Howard Bright,
34 Clifford Johnson,	53 John Ruegg,
5 John Breen,	14 Augustus Blackford,
25 Ellsworth Gulick,	50 John Prall,
13 Fred Bach,	59 Geo. Van Deventer,
28 Fred Hart,	23 D. Raymond Edgar,
6 William Beardsley,	16 V. P. Christopherson,
33 Edwin R. Jacques,	21 Charles Deber,

9 L. R. Buckelew,
10 Samuel B. Brown,
11 Edward Britton.
26 Richard Green,
12 Isidore Brown,
38 Michael Lautenberg,
52 L. Rossman,
49 John M. Parkinson,
51 Harry F. Rappleyea,
17 Abraham Cereghino,
60 Andrew York,
54 Patrick Savage,
56 John Silzer,
30 Jacob Hoffman,
35 David Kline,
18 J. Walter Clausen,
19 Barrett Cohn,
20 John Dahmer.

EDWARD F. HOUGHTON,

Sheriff.

Filed April 1, 1915,

B. M. GANNON,

Clerk.

MIDDLESEX OYER AND TERMINER

The State of New Jersey vs. Harry Patterson et. als., Defendants.	On indictment for murder of Alesandro Tessitore.

Order for Severance.

On application being made therefor by the Prosecutor of the Pleas of the County of Middlesex, alleging by affidavit, that the interests of justice would best be served by a severance and the trial of certain of the defendants separate and apart from those jointly indicted with them:

It is therefore, on this third day of April, A. D. nineteen hundred and fifteen, ordered that the application be granted and that a severance of the indictment be allowed; and that the following named defendants, to wit: James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John C. Smith be tried separately and apart from the other persons jointly indicted with them, for the murder of Alesandro Tessitore.

J. J. BERGEN,

Justice Supreme Court.

Actually entered April 5th, 1915.

State of New Jersey, County of Middlesex, ss:

I, Bernard M. Gannon, Clerk of the County of Middlesex, do hereby certify that the foregoing are true copies of the Minutes of the Middlesex County Court of Oyer and Terminer, as the same are on record, or on file in my office, insofar as they relate to or concern the case of the State vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, for the murder of Alesandro Tessitore.

(Seal.) In testimony whereof, I hereunto set my hand and affixed the seal of said County, this twenty-first day of April, A. D. 1915.

BERNARD M. GANNON,

Clerk.

(Endorsement)
2055

NEW JERSEY SUPREME COURT

State of New Jersey
vs.
Harry Patterson et. al.

Certiorari to Remove Indictment
Returnable April 22nd, 1915

I allow this writ. Let it be sealed.

J. J. BERGEN,
Justice, Supreme Court.

Filed April 22nd, 1915.

WM. C. GEBHARDT,
Clerk.

New Jersey, ss:

(Seal.) The State of New Jersey to our Judges of our Court of Oyer and Terminer in and for the County of Middlesex,

Greeting:

We being willing, for certain reasons, to be certified of a certain indictment before you lately found against Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, for the murder of Alesandro Tessitore as it said, to be determined before us and not elsewhere, do command you that you send, under your hands and seals, to our Justices of our Supreme Court of Judicature at Trenton on the twenty-second day of April, nineteen hundred and fifteen, all and singular the said indictment, together with all things touching and concerning the same by whatsoever names the said Harry Patterson and all the others may be named and called in the said indictment, together with this our writ, that we may further cause to be done what of right and according to law we shall see fit to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our said Supreme Court at Trenton, this

twentieth day of April, one thousand nine hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

JOHN W. WESCOTT,
Attorney General of New Jersey.
Attorney.

In obedience to the command of the within writ, the indictment against Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiller, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney, and Frederick Livingston, for the murder of Alesandro Tessitore, together with all things touching and concerning the same whereof mention is made within, to the Justices of the Supreme Court at Trenton within specified, at the time and place within mentioned, I, James J. Bergen, Judge of the Court of Oyer and Terminer, within mentioned, under my hand and seal hereunto annexed send, as within I am commanded.

J. J. BERGEN,
Judge of the Court of Oyer and Terminer.

In testimony whereof, I, Bernard M. Gannon, Clerk of the Court of Oyer and Terminer of the County of Middlesex, have hereunto subscribed my name and affixed the seal of the said court, this twenty-first day of April, A. D. nineteen hundred and fifteen.

(Seal.) BERNARD M. GANNON,
Clerk.

(Endorsement)
2055

NEW JERSEY SUPREME COURT

In the matter of the application of John W. Wescott, Attorney General of the State of New Jersey for a foreign jury in the trial of the indictment found by the Grand Inquest of the County of Middlesex, against Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Harry Tone, James Bavier, John O'Mara, William McLaughlin, John C. Moran and John Smith for the murder of Alesandro Tessitore.

Affidavits

Service of the within affidavits is hereby acknowledged this twenty-second day of April, 1915.

JOSEPH E. STRICKER,
Attorney of Above Named Defendants.

Filed May 11, 1915.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT

In the matter of the application of John W. Wescott, Attorney General of the State of New Jersey, for a foreign jury in the trial of the indictment found by the Grand Inquest of the County of Middlesex, against Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Harry Tone, James Bavier, John O'Mara, William McLaughlin, John C. Moran and John Smith for the murder of Alesandro Tessitore.

Affidavit.

State of New Jersey, County of Mercer, ss:

John W. Wescott, being duly sworn on his oath, says: I am Attorney General of the State of New Jersey. My official connection with the prosecution of the indictment above named was and is at the instance of the Supreme Court, and began on or about the third day of March, last. On January twenty-second, last, I wrote Hon. W. Edwin Florance, Prosecutor of Middlesex County, a letter concerning the subject matter involved, and offered to co-operate with him at any time. After the third day of March, last, I entered, so far as other duties would permit, upon an investigation of the alleged crime, with the aid of the Prosecutor. Information thus acquired led me, with the concurrence of the Prosecutor, to ask, first, for a severance; secondly, for a foreign jury.

Some of the facts, which justified this course, are the following:

The County of Middlesex, eighth in size in the State, with a population of about one hundred and fourteen or fifteen thousand, has been, several times prior to the present difficulty, profoundly disturbed by strikes, which led to violence and crime, and which created deep and wide feeling throughout the county. The Sheriff of said county is Edward F. Houghton. He is a Democrat, with many friends throughout the county. In the month of January last, there occurred a serious strike, at the plant of Williams & Clarke, of the American Agricultural Company, and some violence had accompanied the strike. The Sheriff and other officials had been importuned by those in charge of Williams & Clarke's establishment for aid to protect life and property, and also to break the strike. Under the circumstances, the Sheriff and others procured the defendants and others to come to Williams & Clarke. These defendants, as I am informed and believe, were what are known as strike-breakers; were non-residents of the County of Middlesex, and a large majority of them non-residents of the State of New Jersey. Some of them were men accustomed to engage in the business of strike-breaking and were of criminal reputation. The Sheriff, without authority of law, swore the defendants in as deputies, and gave them badges. These so-called deputies were harbored at the establishment of Williams & Clarke, were armed with deadly weapons, and abundantly supplied with ammunition. On the nineteenth day of January, last, at or near the hour of eight o'clock in the morning, quite a large number of strikers congregated near the plant of Williams & Clarke. They were unarmed, as I am informed and believe. At that time and place the defend-

ants and others, acting in concert, fired loaded guns at said strikers, who were in flight, killed two of them and wounded several others. After such firing and killing, the defendants returned to the plant of Williams & Clarke and deposited there the guns used, as aforesaid. Afterwards, the defendants were apprehended.

Mr. Justice Bergen, in charging the Grand Jury of the County of Middlesex, amongst other things, said: "The Sheriff, under the law of this State, has no express authority to appoint any deputies, except a general deputy. So far as I can see, there is no authority under the law existing in New Jersey for the Sheriff to appoint what he calls special deputies, and the exercise of that power, the appointment of persons, at least, who are not residents of the county, is not only to be deprecated as against public policy, but it is in exact violation of the law of the State."

The defendants were indicted by the Grand Jury, after the charge from which the above is a quotation. The defendants were the agents and deputies of the Sheriff at the time they fired upon and killed the person or persons for the murder of whom they are indicted. They were put in charge of said Sheriff, and have since been in his charge. They are, as I am informed and believe, kept, not in separate confinement, but together, in one or more large rooms; are regularly paid a per diem of three dollars; enjoy such luxuries as such money and the unrestricted intercourse and attention of friends will permit.

While it is true that the Sheriff will not himself and alone draw the jury to try the defendants, he will participate therein. Furthermore, he and his agents will have custody and control of the jury after it is empaneled.

From conversations with divers citizens of Mid-

dlesex County, I learn, and believe it to be true, that there exists amongst the inhabitants of the county three distinct types of feeling and opinion concerning the shooting spoken of; one to the effect that the strikers were foreigners, Socialists, anarchists and disturbers of peace and order, and that the said deputies did right in killing them; another to the effect that the said deputies are murderers, and that they should be executed as such; the other to the effect that the Sheriff and his deputies are on trial, and that the Sheriff and his deputies are equally to blame for what happened, that the Sheriff thought and believed he was doing right, and that he should be vindicated by the acquittal of the defendants.

The Grand Jury, which indicted the defendants, on February fifth, nineteen hundred and fifteen, made the following presentment:

> "To the Judges of the Court of Oyer and Terminer of Middlesex County.
>
> In this presentment of this Grand Jury, at the close of its thorough investigation of the shooting of certain persons at Roosevelt, N. J., during the recent strike troubles, it is unanimously agreed that the Sheriff has acted throughout this strike in a most rational manner in his method of procedure when called upon to protect life and property as laid down by precedent as the best course he could pursue under the circumstances—that he maintained his authority and performed his duty in an honest, courageous and efficient manner and is thereby exonerated from all blame as to the shooting, and is commended for his manly and upright conduct since the unfortunate occurrence.
>
> "In view of the fact that by the law as

laid down by Justice Bergen in his charge to this Grand Jury, the so-called deputies as sworn in by the Sheriff when called upon by citizens to protect their lives and property have no standing in law as officers, and are entitled to no immunity as such and in order to secure this protection formerly guaranteed by Sheriff's deputies (it having been clearly shown that the ancient, antiquated resort to the Posse Comitatus can not be applied to present conditions for the suppression of disorder) this body of Grand Jurors earnestly recommends the institution of a State constabulary and petitions the Legislators of this State to familiarize themselves with the splendid record and assured success of the Constabulary of the State of Pennsylvania and to carefully and conscientiously consider any measure put before them to create such a body, and that copies of this recommendation be sent to our present Legislators and to the Governor of this State."

At the April Term, nineteen hundred and fifteen, of the Oyer and Terminer, in Middlesex County, Justice Bergen said to the Grand Jury:

"There is one other matter I want to call your attention to: "You are not controlled at all by the refusal of the previous Grand Jury to find an indictment, or find any indictment or to investigate any wrong against the public, so long as the offence is within the statutory limits. I charged the last Grand Jury in reference to the Roosevelt matter, that if persons claiming to be strikers, who had a right to quit

work, that they are not indictable for. If they gathered together in an unlawful assemblage and acted in a manner that was tumultuous, amounting to a breach of the public peace, they ought to be indicted. The Grand Jury, I am informed, after investigation, declined to present any indictments against persons of that character. You are not controlled by that. You may institute an investigation on your own account, and if you find, within the statutory time, persons who had struck, that is, had quit work, did not obey the law, but gathered together in tumultuous assemblage, contrary to the law, acting in a riotous and tumultous manner, then they ought to be indicted. It will not do to say that the crime of gathering together in an unlawful assemblage is a small matter. It is, in a way, perhaps, but it is a breach of the peace, and if the Grand Jury will not step in and interfere with a violation of the law of that character, the next time persons who act in such a manner will take that as an indication that it is public sentiment that they may gather together in a riotous manner, and act tumultuously, terrorizing other citizens.

"The law is no respector of persons. All men who violate the law, it does not make any difference what your sympathies may be, or mine, if they violate the law they ought to be punished. They ought to be indicted, they ought to be convicted, and they ought to be punished. It may be the punishment ought to be very moderate, but that you have nothing to do with. So

if the Prosecutor should lay any such matter before you, or if on your own initiative you undertake to investigate that question and find that there was a prima facie violation of the law by persons who instituted that strike, then they ought to be indicted, just as well as anybody else. You cannot indict one set of men and excuse another, if they are all guilty."

"In the matter of examination of Laber and other difficulties between Employer and Employe in and about the vicinity of Roosevelt, Middlesex County, New Jersey.

Minutes of testimony and other proceedings taken in the above stated matter before the Hon. William Nelson Runyon, Chairman; Hon. Oliver J. West, Hon. Charles A. Wolverton, Hon. Arthur A. Quinn, and Hon. Charles C. Pilgrim, a committee appointed by the Hon. Carlton Godfrey, Speaker of the New Jersey House of Assembly, pursuant to a resolution passed by said House of Assembly, on January 26th, 1915, a copy of which is as follows:

"Whereas, Certain labor troubles appear to exist between the employers of labor and their employees, in or about the vicinity of Roosevelt, Middlesex County, New Jersey; and

"Whereas, It is reported that the wages which said employees have been receiving are meagre, as a result of which great hardship has been the portion of said employees and their families; and

"Whereas, It seems advisable that the Legislature should be put in possession of such facts connected with the above situation as will enable it to deal knowingly and intelligently with the same,

and with a view to the adoption of such remedial legislation as shall tend to guard against future troubles of like nature;

"Resolved, That a committee of five members of the House of Assembly be appointed by the Speaker to make a full, complete and thorough investigation into the truth of the said alleged troubles; the living conditions of the said employees, the cause of said troubles, and the differences existing between said employers and employees; and furthermore that said committee shall have power to sit during the session of the House of Assembly and after adjournment thereof, to issue subpoenas for the attendance of witnesses; to employ such help as shall be necessary for the proper conduct of its work, and said committee is hereby instructed to report the result of its investigations to this House of Assembly."

That the Committee met on the eighteenth and nineteenth days of February, and proceeded to take testimony. Mr. Joseph E. Stricker, on that occasion, appeared before said Committee as counsel for the defendants, and, amongst other things, said:

"I have seen it freely announced in the press that the wages of $1.60 a day for laborers is inadequate; I have seen it announced that the wages for which it is said these men have returned to work, $1.80, is not what it should be; and hence there is a feeling, not only a feeling, there is an inflamed condition throughout this county that someone is to blame, and incidentally these men are

connected with it. Now, it is argued in the press and it is argued by the public that my clients are the agents of the company, undoubtedly that employed them, it is charged had employed them, and that that company perhaps is responsible for the condition which you gentlemen are about to investigate in the first instance; and I repeat, I think that it is unfair, and I say these men can not be properly tried and an impartial verdict rendered in an atmosphere which unquestionably will become pregnant with the complaints of the workingmen on the one side and perhaps the defense of the plants on the other. I understand, as you gentlemen understand, that the trial of these men is not to be prejudiced by any investigation. I do not think that you gentlemen have gathered here for the purpose of in the least wise interfering with the ordinary course of justice, and at the same time I feel confident that no fair trial in this county can be had in an atmosphere such as must be created here. Now, if you do not defer this investigation until such time as this trial is over, which I believe will be sometime during the latter part of March—I think that you can get at the very same thing that you can at this time, that the conditions, the reasons for the conditions, as I understand the scope of this investigation to be, will be ascertained just as well after these men have been tried as they would be at this time.

"Mr. Pilgrim—What is your idea about delay, Mr. Stricker?

Mr. Stricker—What is my idea?

Mr. Pilgrim—Yes.

Mr. Stricker—I have tried to state it.

Mr. Pilgrim—I know, but what definite plan have you about the delay, putting off of the hearing?

Mr. Stricker—What definite plan?

Mr. Pilgrim—Yes.

Mr. Stricker—I would suggest that this investigation be deferred until these men are tried.

Mr. Pilgrim—Is there any greater objection to a Legislative investigation, which in its very essential is impartial, than there would be to a Grand Jury investigation?

Mr. Stricker—Yes.

Mr. Pilgrim—Or any investigation to make public the facts on both sides?

Mr. Stricker—Yes.

Mr. Pilgrim—Without taking sides?

Mr. Stricker—Yes, I think there is. I think that from my very experience in this particular case that if it had not been for the public prejudice, if it had not been for an inflamed community that indictments for murder would not have been returned.

Mr. Pilgrim—Are you not assuming in your statement that this Committee is going to take sides against the particular clients that you represent?

Mr. Stricker—No. I am very sorry I have not made myself clear.

Mr. Pilgrim—I am not at all imputing any object. I was trying to follow the logic.

Mr. Stricker—Looking at my own de-

linquency in making my point clear, I honestly and sincerely believe this is a fair investigating committee — that I want distinctly understood; but I do say this: That the very fact of an investigation, the printing of the testimony as it develops every day, right or wrong, will have a tendency to sur-charge the atmosphere with a prejudice which will be— well, which is bound to work a hardship to the defendants whom I represent.

Mr. Stricker—Yes, but the difficulty is whatever you do or whatever is said here, whatever is done here, no matter how fair you gentlemen wish to be, it has a certain influence upon the community that is going to try these men, because in the final analysis it will be twelve men that will try these men, and those men will be drawn from this county.

Mr. Quinn—And you intimate that this hearing will have a bearing on the minds of the jurors?

Mr. Stricker—Yes, I do say that, bound to have.

Mr. Quinn—And in a sense it won't be a question of the guilt or innocence of these men, but it will be the prejudice that will arise from this?

Mr. Stricker—Yes, I say that.

Mr. Quinn—You don't mean to intimate that this community is inflamed to that state or that they are the same class of people? I believe that the men who serve on the juries of Middlesex County will realize they are trying human beings for their lives.

Mr. Stricker—As former prosecutor of

Middlesex County I have met a great many juries and I want to say that the juries of Middlesex County are made up of men of honesty and integrity and I believe they will do absolute justice, but I do say they are all human.

Mr. Quinn—Do you call that human, to sacrifice human life to prejudice?

Mr. Stricker—Well, if you will take the trouble and look through the reports you will find where there has been such a thing as an improper conviction. You evidently have never sat at the counsel table in the State of New Jersey when a jury was being selected, and probably your colleagues can help you out and show you how narrow the limitations are in New Jersey."

The hearing from which the above are quotations was had at No. 2 Engine House (Fire Department), in the Borough of Roosevelt.

From these and other circumstances set forth in following affidavits, it became clear to me that a jury with which the Sheriff had nothing, directly or indirectly, to do, ought to try the defendants, in the interests of impartial justice. From the strong feeling indicated by the foregoing facts and circumstances, it became my conviction that it would be quite difficult, if not impossible, to secure a jury free from bias in favor of either the defendants, the strikers, or the Sheriff.

JOHN W. WESCOTT.

Sworn and subscribed before me this twenty-first day of April, nineteen hundred and fifteen.

THEODORE BACKES,
M. C. C. of N. J.

State of New Jersey, County of Middlesex, ss:

John W. Helm, of full age, being duly sworn according to law on his oath, says: I am in the fire insurance business in the city of New Brunswick, as secretary of an insurance company of that city. I have been conversant with the progress of the prosecution of the deputy sheriffs indicted for murder in connection with the shooting at Roosevelt, and have talked with many people of different classes and occupations living in and about New Brunswick, concerning the trial of these deputies. According to the best of my knowledge, information and belief formed from such conversations, and from the sentiments expressed, and from all the facts and circumstances which I have observed, a jury drawn generally from this county would not be unprejudiced and unbiased judges of the facts of this case. There exists among the citizens with whom I associate a strong feeling of resentment against Attorney General Wescott for what is regarded as his "interference" in this case, and because of his attempt to secure a foreign jury for the trial thereof. This attempt is popularly regarded as an insult to the citizens of Middlesex County, and has caused widespread bitter feeling against the Attorney General. There exists also a widespread feeling of approval and commendation of Sheriff Houghton's course in all matters relating to this case, and a popular desire to see the Sheriff completely exonerated. I have also heard the opinions repeatedly expressed by citizens of this county to the effect that the strikers were "only a lot of damn foreigners anyway," and "got just what they deserved," and "ought to be shot anyway." The general opinion of the citizens of the county with whom I associate is

that the indicted deputies will not be convicted and should not be convicted.

JOHN W. HELM.

Sworn and subscribed before me this twentieth day of April, 1915.

JOSEPH LANIGAN,
Notary Public of New Jersey.

State of New Jersey, County of Middlesex, ss:

Joseph L. Crowell, of full age, being duly sworn according to law, on his oath says that I reside in the city of Perth Amboy, in the County of Middlesex; that I am business agent of the Carpenters and Joiners Union of Perth Amboy and that I am president of the Central Labor Union of Perth Amboy, that from the sentiment expressed I do not believe that a fair and impartial trial of the "deputies" indicted for murder in connection with the shooting at Roosevelt could be had before a jury selected from the county of Middlesex; that I was a member of the panel of petit jurors for the last Term of Court held in Middlesex County and I heard some members of that panel express an opinion that if they were members of the jury that might be selected for the trial of this case they would hesitate a long time before convicting them, because of the class of people that compose the strikers.; that to the best of my knowledge and belief I do not think that a fair and impartial trial could be had before a jury selected from Middlesex County.

JOSEPH L. CROWELL.

Sworn and subscribed before me this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public of New Jersey.

State of New Jersey, County of Middlesex, ss:

Arthur Schroeder, of full age, being duly sworn according to law, on his oath says: I reside in the city of Perth Amboy, County of Middlesex, I am the business agent for the Painters and Plumbers Union in the districts of Perth Amboy, Roosevelt, Carteret, Sayreville, Metuchen; I am also assistant labor inspector under the Department of Labor of the State of New Jersey. According to the best of my knowledge, information and belief formed from my association and discussion with mary laboring men and also other citizens of the County of Middlesex I do not believe that a fair and impartial trial of the indicted deputy sheriffs cannot be had before a jury drawn from the County of Middlesex. I know that the feeling of the people of the county with whom I associate is such that they could not sit as unprejudiced jurors in the said trial. Many favor Sheriff Houghton and repeatedly express the hope that the deputies appointed by him will never be convicted. The opinion is general among these men that a jury from the County of Middlesex will never convict these deputies. On the other hand the laboring men with whom I associate feel bitter against Sheriff Houghton and his deputies and express the hope that all the deputies be convicted of murder. I believe that both the laboring men and the others have formed already a judgment of the case, and have strong feelings either in favor of or against the said Sheriff Houghton and his deputies and are not competent by reason of this opinion and their prejudice either for or against the said defendants, to render an impartial verdict.

(Struck out before signing)

ARTHUR SCHROEDER.

Sworn and subscribed before me this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public of New Jersey.

State of New Jersey, County of Middlesex, ss:

Tracy S. Voorhees, of full age, being duly sworn according to law, on his oath says: I reside in the city of New Brunswick, I am a law student in the office of W. Edwin Florance, the Prosecutor of the Pleas of Middlesex County. I have been conversant with all the facts and circumstances relating to the prosecution of the deputy sheriffs indicted for murder in connection with the shooting at Roosevelt, New Jersey, on the nineteenth day of January last. I have talked with many citizens of the said county, in New Brunswick, Perth Amboy, in South Amboy, in Metuchen and in Roosevelt, to the number of at least one hundred, concerning the said matter, and according to the best of my knowledge, information and belief, formed from such conversations and from the sentiments expressed and from all the facts and circumstances which have come under my observation relating to the said case, there exists a strong partisan feeling among many citizens in the county in regard to this prosecution.

The expressions of sentiment show two distinct classes of opinion:

First—In and about the Borough of Roosevelt, and among the laboring classes and union men in and about Perth Amboy, there is a strong and bitter feeling against these defendants and hostility to them, and among these men I have heard opinions expressed to the effect that the defendants are all hired gunmen and murderers who ought to be hanged. Among this class of men, so far as I have been able to ascertain, this feeling

is almost unanimous, and is bitter against the defendants.

Second—Many citizens from the county at large, and particularly in the city of New Brunswick, have expressed to me strong sentiments of approval of Sheriff Houghton's course in dealing with the strike situation, and in appointing and swearing in the defendants and others as deputy sheriffs, and the feeling is general among this class of citizens that Sheriff Houghton is involved morally in the prosecution of these defendants, and that a conviction of these defendants would reflect upon the Sheriff. Also many citizens of different classes and occupations, who reside in different sections of the county, have expressed to me the wish that these defendants be acquitted, and also repeatedly expressed to me at a time before any publicity was given to the motion for a foreign jury, the opinion that these defendants would never be convicted, and have shown a strong desire that there be an acquittal of these defendants.

The leading newspaper of Middlesex County, both by articles and editorials, has shown strong partisanship and bias in its reports of and comments on this case. Annexed hereto are clippings of such articles and editorials cut from the respective issues of the said paper, upon which clippings are noted the date of the issue from which each was taken.

TRACY S. VOORHEES.

Sworn and subscribed to before me this twenty-first day of April, A. D. nineteen hundred and fifteen.

JOSEPH LANIGAN,
Notary Public of New Jersey.

(Home News Editorial, Jan. 27, 1915.)

NO REFLECTION ON SHERIFF

A new proposition in law—new at least to nine-tenths of those who listened to his words—was enunciated yesterday by Supreme Court Justice James J. Bergen in his charge on the Roosevelt strike. The court declared that a sheriff has no power under the law of the State to appoint special deputies in the sense that such deputies have been customarily employed in times of labor disturbances in all sections of New Jersey.

That the Sheriff is confined to calling upon "the body of the county" was the dictum of Justice Bergen—thus indicating that all sheriffs who have gone outside their own county in selecting aides to enforce the law have been in error.

However, Justice Bergen made it plain that his words cast no reflection upon Sheriff Edward F. Houghton—and it is a matter of common knowledge that for many years past the sheriffs of this county have done exactly as Mr. Houghton did in the matter of employing deputies.

Which leads us to say that the clamor against the Middlesex Sheriff, on the part of the metropolitan press and some papers within the State, is absolutely without effect on those who know Mr. Houghton's ability and integrity.

If the State has permitted improper methods of providing protection in the past, it is safe to say that it will profit by the lesson of the present hour. In the meantime Sheriff Houghton has lost no whit of public esteem, and clamor against him should cease.

(Home News Editorial, Feb. 6, 1915.)

NEW JERSEY—AND COLORADO

Brought into the lime light through industrial

disturbances that had very similar effects, namely, the killing and maiming of strikers, New Jersey and Colorado have had the attention of the nation in a most unusual degree. Both commonwealths were held responsible before the country for the troubles within their boundaries.

In Colorado those who transgressed every law of common humanity, and even shot down women and little children in their excess of authority, found many in high places ready to excuse their acts and efforts to prevent the punishment of the guilty were promptly instituted.

In New Jersey—be it said to its credit—the machinery of the law was set in motion that a full disclosure of the truth might be made and the guilty parties held accountable to the law. The action was intelligent and fearless and absolutely prohibited the shifting of blame.

Fortunately, also, there are no manifestations of partnership in the strike inquiry, the results of which were made known in the presentation of twenty-six indictments for murder and a like number for atrocious assault and battery. The trial of the deputies thus charged will be watched with interest from the Atlantic to the Pacific, and will be one of the greatest events in criminal jurisprudence in the State.

It is a matter for sincere gratitude that the Middlesex Grand Jury was impervious to the clamor against Sheriff Edward F. Houghton, whose course from the beginning of the strike was that of an efficient officer of the law. That the jury so found was to be expected of men of sound reasoning.

In urging the need of a State Constabulary for New Jersey, the jury gave evidence of the thorough manner in which the entire strike problem was handled. Its recommendation should go far toward securing this much-needed institution.

(Home News Editorial, Feb. 11, 1915.)

SHERIFF AS PEACEMAKER

A striking illustration of the common sense methods employed by Sheriff Edward F. Houghton in handling the Roosevelt strike was furnished yesterday when several hundred strikers returned to work as a result of his efforts. The Sheriff worked from the beginning to restore harmony in the strike zone, but was prevented from putting his plans into effect through the efforts of certain men who saw a chance to make political capital out of the strike.

This most recent labor disturbance has taught a costly lesson to all concerned and the legislative investigation, which promises to be complete, should aid in relieving the situation of the workers at Roosevelt and making impossible a repetition of the murderous acts committed in the name of the law.

The opposition to a State Constabulary on the part of labor unionists is ill-advised, to say the least. It will be very generally taken as an endorsement of lawless acts and an unwillingness to have order preserved pending the adjustment of difficulties in the world of labor.

(Home News Editorial, Feb. 17, 1915.)

"GOING SOME"

Called upon by the State Legislature to tell what steps have been taken to break up the notorious coal combine within the borders of New Jersey, Attorney General John W. Wescott sent a remarkable communication to the legislators to the effect that if they would supply him with evidence against the combine he would be pleased to proceed with the prosecution.

Most of us would take a chance on presenting

a case in court—with the evidence all supplied ready for use. But the Attorney General is being paid the neat sum of $7,000 per annum from the public funds and we had labored under the impression that his salary was intended to cover the gathering of evidence in behalf of the State—or at least making an effort in that direction.

This is the same Mr. Wescott who rushed into print last month with a "grand-stand" exhibition anent the strike trouble at Roosevelt, and who wrote the Middlesex prosecutor a letter that was seemingly intended to excite public opinion against Sheriff Houghton. The letter fell flat. We trust Mr. Wescott's offer to assist in the prosecution of men under indictment in Middlesex will go the same way.

Evidently, the Attorney General can find enough to occupy him for a time by following up the suggestion of the Legislature relative to the coal combine, to say nothing of the combination of North Jersey bakers that made possible an increase in the price of bread within the past few days. We doubt that Middlesex cares to engage the attention of this brilliant official.

(Home News Editorial, April 3, 1915.)

WHY THIS DISPLAY?

Whatever the outcome of the hearing before Justice Bergen on Attorney General Wescott's motion for a foreign jury to try the indictments against the Roosevelt strike "deputies," there can be but one opinion regarding the direct insult to the men of Middlesex county conveyed by Mr. Wescott's motion.

The pettit jury for the April term of court, from which in the nature of things, a panel would be drawn to try the murder indictments, was selected

under the reform jury act and by a commission composed of Fred J. Cox and Sheriff Edward F. Houghton. The petit jury was drawn in the presence of County Judge Peter F. Daly, the names of the sixty men who were called upon to act being taken by lot from among five hundred possible jurymen.

Every section of the county was represented in the jury list and the presence of Judge Daly at the time of drawing the jury gave a guarantee that the selections were made in strict accordance with a law designed primarily to prevent the summoning of a biased jury.

Mr. Wescott, who is not a resident of Middlesex and whose interest in the forthcoming trials has smacked of gallery-playing from the start, assumes to tell Justice Bergen and the State at large that an impartial trial cannot be had in this county, either from the sixty men already selected or from the entire body of men included in the make-up of our county.

His declaration that Sheriff Houghton was incompetent to assist in drawing the jury because of his interest in the trials is belied by the Sheriff's attitude throughout the proceedings. It was Mr. Houghton who insisted that the Prosecutor's office be furnished with a list of the strike "deputies," and from beginning he has aided in every way to have strict justice wrought.

We recall that this man Wescott, almost before he had gotten installed as Attorney General, sent letters to all the prosecutors of the State, calling attention to the increased cost of administering the criminal law, and urging that the expenses of the courts be kept down to the lowest possible figure.

(Home News Editorial, April 9, 1915.)

HANDLING STRIKES

The method of handling rioting incident to the strike at the Summit Silk Mills this week afforded an excellent illustration of how effective cooperation between the county sheriff and the municipal police may be under such circumstances, and was in striking contrast to the methods employed in the recent strike at Roosevelt, this county.

At Summit the police authorities united with the sheriff of the county from the very inception of the strike, and when rioting occurred an alarm was turned in that brought the entire Summit fire department to the scene—their presence resulting in the mob quickly dispersing.

In the Roosevelt strike, Sheriff Houghton received almost no aid from the municipal authorities. In fact their attitude was distinctly antagonistic, and it was but natural that the more riotously inclined among the strikers were emboldened thereby. To what extent their actions justified the use of firearms by the deputies employed by the sheriff is not for us to say. That question will be passed upon by a jury in due time. But we are free to state our belief that the jury which passes on the case should be made up of Middlesex County men and none other.

The action of Attorney General Wescott in requesting a foreign jury, to be composed of men from Mercer county, was an insult to the people of Middlesex, from its judge down to the humblest citizen. There has at no time been any bias in the attitude of the officials of this county, nor upon the part of the public, as represented by the press. All unite in demanding that strict justice shall be done.

To say that a fair trial in the Roosevelt case

cannot be secured in Middlesex is to allege that which is untrue. The April Term petit jury, almost to a man, is composed of citizens suggested by former Sheriff Appleby and Jury Commissioner Cox, the list of five hundred possible jurymen prepared by those gentlemen before drawing the petit jury for the December Term having had but sixty new names inserted. Of those selected for the April jury, we are reliably informed that the present sheriff suggested but five.

It is to be hoped that the foreign jury motion by Mr. Wescott, which counsel for the deputies has succeeded in having referred to a branch of the Supreme Court for decision, will be determined adversely to the Attorney General. Justice demands that such a course be pursued.

The net result of Mr. Wescott's motion to date has been that twenty-five men who are entitled either to be acquitted or convicted will be held in the county jail until the last of May, or possibly until September. This, too, after their counsel had prepared for their trial on Tuesday, April 6.

Mr. Wescott declares the case is a conflict between capital and labor—a term which is generally used for the benefit of the morbid crowd in inciting to sensationalism. He also remarked at a recent hearing in Elizabeth that the State of New Jersey is on trial in this case, which leads us to remark that if a body of men are to be held in the county jail from January until September simply in order to allow one man to experiment with a matter of practise, New Jersey will very quickly lose its prestige in criminal law in the sight of the nation at large.

(Home News Editorial, April 12, 1915.)

THE COAL COMBINE

Attorney General Wescott has been officially

and formally notified of the report made last year by the committee that investigated the alleged coal combine in New Jersey, and told that he will find in the State Library the testimony taken by the committee, which shows the existence of a combination.

An official who failed to keep in touch with such important matters that have a close relation with his department, cannot be expected to know that Judge Relstab imposed fines amounting to $200,000 on the New Jersey Central Railroad Company for giving rebates.

Those rebates must necessarily have something to do with the alleged trust or combine that keeps up prices. When the Attorney General is ready to begin action in accordance with the suggestion made by the Senate, he may find in the United States District Court certain information of value.

Subscription to one or more of the clipping bureaus will be found useful in keeping the State's law department posted on what is happening that should interest its chief or one of his numerous assistants.—Trenton Times.

(Home News Editorial, April 19, 1915.)

JOCKEYING SHOULD CEASE

The theory of our criminal law is that every accused man is entitled to a fair and speedy trial, no matter how grave the accusation brought against him—but this theory is one that is evidently regarded but lightly in the office of the Attorney General of our State.

Beaten to a standstill on Saturday last when the order he had secured from Justice Bergen for a foreign jury to try the indicted Roosevelt strike "deputies" was vacated, the Attorney General gave notice of a motion to put the foreign jury question in the Supreme Court. He disregarded

an offer by opposing counsel to consider the matter as now before that tribunal, and absolutely refused to go into the merits of the foreign jury motion without further delay.

The indicted men, to the number of twenty-five, have now been held three months in the county jail—a place that has been repeatedly condemned as unsanitary and unfit for human abode. That a crime is being committed against the health of these men may be easily apparent, and common humanity demands that the jockeying by the Attorney General's office shall cease.

There is no reason under heaven why the trial of the "deputies" should not proceed, with a jury composed of Middlesex County men. The county has already been put to a tremendous expense in connection with this case and to saddle it with the burden of transporting a panel of jurymen from another county, and the other expenses incident to such a plan is without justification in law or reason.

(Home News, Jan. 22, 1915.)

SHERIFF LAYS OFF DEPUTIES CHARGED WITH MANSLAUGHTER

Sheriff Houghton today laid off the twenty-one deputies arraigned before Judge Daly on Wednesday on a charge of manslaughter in connection with the death of Alesandro Desidori, Roosevelt striker, and released under $2,000 bail each.

The Sheriff said: "Police officers who are charged with offenses are suspended from duty. I laid off these men today in accordance with this custom."

What is to become of the deputies is not known. They are to be relieved of their badges and shields and only their bondsman, the National Surety

Company, of New York City, has now any interest in or control over their movements.

If the guilty men are among their number, these men can disappear without the county authorities officially knowing it until they are called for trial.

Last night County Detective R. A. Peltier gathered together a committee of seventeen strikers in the Roosevelt Borough Hall. The men were taken to the Williams & Clark plant, in company with Chief of Police Harrington and Assistant Chief Donovan.

At the plant fifty deputies were lined up in a large room.

Twenty-four of them, three men more than were arraigned before Judge Daly, were identified by the strikers as men who had participated in the slaying of Desidori and Patty.

Some of these men were not among the twenty-two against whom County Detective John R. Ferguson swore out complaints.

Some of the men had attempted to disguise their identity. Men who had not worn glasses at the time of the shooting, wore them when they were lined up for inspection. Others had had haircuts, and moustaches shaved off. Others wore different clothes. Any disguise that was not too obvious was resorted to.

The identification was completed by 9 o'clock. This morning Prosecutor Florance said he had not heard from Detective Peltier on the names and addresses of these men.

Foreign Governments Investigate

This morning a representative of the Italian Ambassador at Washington arrived at Roosevelt to investigate the killing of Alesandro Desidori, the first striker to die from wounds inflicted by the deputies' guns. Desidori was not an American citizen. He was still under the protection of the Italian government.

This afternoon a representative of the Austro-Hungarian Embassy is expected. Carman Patty, who died yesterday, after suffering terribly from five wounds, was a citizen of the dual empire.

Victims Were Prominent Among Strikers

The deputies could not have picked out men whose slaying could have had more serious consequences and brought on more deplorable complications than has the death of these two men. Desidori and Patty were among the prominent figures of the strike. When they fell the strikers felt that their leaders had been slain. As though this were not sufficient, now the complication develops that foreign governments are intensely interested in the alleged unwarranted shooting of their subjects in a land relied on to furnish protection to everyone.

Tomorrow's Developments Feared

Tomorrow is awaited with foreboding by the Roosevelt authorities. It is feared the emotional climax of the strike will be reached. Tuesday and Wednesday the strikers were numb with the suddenness of the catastrophe. Yesterday their indignation began to rise and find expression. It was goaded by the return to strike duty of the twenty-one deputies officially thought to be responsible for the shooting. The more ignorant of the strikers saw in the return an apparent official approval of the Tuesday tragedy. Still, the leaders and labor organizations deplored violence, and there was none. Nor has there been any today.

Monster Double Funeral

But there is a deep, sullen undercurrent that makes the air at Roosevelt tingle. The two men are to be buried together, from Van Nest's Hall. The day promises to be fair. The hall will be jammed to its doors, and outside a great throng will wait to march in the funeral procession. Meagre as are the strikers' finances, great prepa-

rations for costly and numerous floral tributes to their "martyrs" are being made.

"Mother Jones" and Meyer London, Socialist Representative-elect from New York City, will speak at the funeral.

Today Chief Harrington said that no preparations for keeping order had yet been begun.

Sheriff Houghton said, when asked what his part in the preparations would be: "I am taking care of the plants. What happens on the streets is up to the Roosevelt police."

(Home News, Feb. 6. 1915.)

OLD-TIME OPPONENTS WHO WILL MATCH WITS

To Fasten Murden Guilt on Twenty-six Deputies

(Cut here of W. Edwin Florance.)

W. Edwin Florance

Of New Brunswick, Prosecutor of Middlesex County, who won office in contest with Mr. Stricker.

To Free Men Charged with Slaying Unarmed Strikers

(Cut here of Joseph E. Stricker.)

Joseph E. Stricker

Of Perth Amboy, former Assistant Prosecutor of Middlesex, who was defeated for Prosecutor appointment by Mr. Florance.

Prosecutor Florance will lead the State's fight to brand as murderers the twenty-six deputies under indictment here on a charge of having wilfully and with malice aforethought slain two unarmed Roosevelt laborers.

Former Assistant Prosecutor Stricker has been engaged to defend the deputies.

When Mr. Florance and Mr. Stricker clash in open court it will be their first court battle. But

it will not be the first time they have led opposing forces to the fray.

When Circuit Court Judge George S. Silzer was elevated to the bench, Mr. Stricker was Assistant Prosecutor, and was regarded as in line for the Prosecutorship. Mr. Florance entered the lists and won the appointment. There has never been any apparent ill-feeling between the men.

Florance May Not Call on Attorney General
In the Murder Trials

Prosecutor Florance stated today that he will at once communicate with Joseph E. Stricker former assistant prosecutor and counsel for the 26 deputies indicted yesterday for murder in connection with the killing of two strikers at Roosevelt, and will arrange for a date on which the pleas of the men shall be taken. It is likely that the pleas will be taken next week.

It will, of course, be necessary for Justice Bergen to come here to take the pleas in the murder indictments while pleas on the charges of atrocious assault and battery may be taken by County Judge Daly. The prosecutor said he had made no decision as yet regarding which indictments would be tried first, but it is generally expected that the deputies will be placed on trial for murder at an early date. The assault charges are of a secondary character and will be allowed to wait, in all probability.

Mr. Florance was asked whether he would invite Attorney General Wescott to come here and assist in trying the deputies, and on this point also said he had not fully decided. It will be recalled that the Attorney General, John W. Wescott, some time ago offered his services in the event that murder indictments were returned.

No mention was made of the officials of the fertilizer plants, nor of Mayor Hermann, of Roosevelt, in yesterday's proceedings nor was there any

mention of indictments against such of the strikers as were guilty of obstructing the railroad tracks at Roosevelt although warrants were issued some time ago for two of these strikers.

There is a rumor to the effect that more indictments in the strike probe will be handed in when the Grand Jury meets again next Wednesday morning.

The presentment, handed in by the Grand Jury, has attracted wide attention. It was framed by a committee of the jury composed of the foreman, Charles Snedeker, of Perth Amboy; William H. Everson, of this city, and William T. Ames, of Woodbridge.

The presentment is given in full herewith:

Feburary 5th, 1915.

To the Judges of the Court of Oyer and Terminer of Middlesex County:

In this presentment of this Grand Jury, at the close of its thorough investigation of the shooting of certain persons at Roosevelt, N. J., during the recent strike troubles it is unanimously agreed that the Sheriff has acted throughout this strike in a most rational manner in his method of procedure when called upon to protect life and property as laid down by precedent as the best course he could pursue under the circumstances—that he maintained his authority and performed his duty in an honest, courageous and efficient manner and is thereby exonerated from all blame as to the shooting, and is commended for his manly and upright conduct since the unfortunate occurrence.

In view of the fact that by the law as laid down by Justice Bergen in his charge to this Grand Jury, the so-called deputies as sworn in by the Sheriff when called upon by citizens to protect their lives and property have no standing in law

as officers, and are entitled to no immunity as such, and in order to secure this protection formerly guaranteed by Sheriff's deputies (it having been clearly shown that the ancient, antiquated resort to the Posse Comitatus can not be applied to present conditions for the suppression of disorder) this body of Grand Jurors earnestly recommends the institution of a State constabulary and petitions the Legislators of this State to familiarize themselves with the splendid record and assured success of the Constabulary of the State of Pennsylvania and to carefully and conscientiously consider any measure put before them to create such a body and that copies of this recommendation be sent to our present Legislators and to the Governor of this State.

Respectfully submitted,

CHARLES SNEDEKER,

Foreman.

(Home News, p. 1, Feb. 1, 1915.)

MASS MEETING WANTS REMOVAL OF THE SHERIFF

Strike Gathering at Roosevelt Passes a Resolution Calling on General Assembly to Remove Sheriff Houghton—Sheriff to Make No Statement.

A strike mass meeting attended by 1,000 Roosevelt strikers and sympathizers in the Majestic Theatre, Perth Amboy, yesterday, passed a resolution calling on the General Assembly to remove Sheriff Edward F. Houghton from office.

Sheriff Houghton today declined to discuss the resolutions, but the sentiment is expressed by the Sheriff's many friends that agitation such as that at Perth Amboy yesterday is in decidedly bad taste at this time, when the Grand Jury is engaged in probing the Roosevelt strike.

Mr. Houghton has maintained a dignified silence since the Grand Jury investigation was begun and his attitude is meeting general approval.

The meeting was addressed by Mother Jones, Meyer London, Socialist Congressman-elect of New York city; Joseph Cozalino, a Newark labor leader, and Samuel Botterill, vice president of the Brotherhood of Carpenters and Joiners of America, of which Sheriff Houghton is a member.

The resolution was scathing in its terms. It follows:

"Whereas, There has but recently occurred a massacre of unarmed strikers at Roosevelt, whose only offense had been asking for what had recently been granted them—namely, just enough to exist upon, and

"Whereas, The hired assassins who committed these dastardly murders were employed, armed and invested with the authority to represent law and order by the Sheriff of Middlesex County, when he knew they were but gangmen, gunmen and habitues of dens of vice who lack every moral instinct of the human race, and

Whereas, The Sheriff further knew the bringing of these thugs is always followed by a wanton, bloody, savage and murderous assault upon innocent men, women and children alike, and

"Whereas, The placing of these human vampires upon the throats of the citizens and residents of Middlesex County has brought forth protest and censure from all right thinking people in every part of the United States and caused Middlesex County to be compared with Cossack rule in darkest Russia, and

"Whereas, The General Assembly of the State of New Jersey has appointed a committee to thoroughly investigate the outrages committed in Roosevelt, therefore, be it

"Resolved, That we, the citizens and taxpayers

assembled here this day of January 31, 1915, do protest against the entire action of the Sheriff, and be it further

"Resolved, That we, the citizens and taxpayers of Middlesex County, believe the Sheriff of Middlesex County, Edward F. Houghton, has proven himself inefficient and incompetent to perform the duties assigned to him, and request and urge the General Assembly committee appointed to investigate the Roosevelt massacre to use all means in their power to bring about the immediate removal of said Edward F. Houghton to the end that justice will prevail and special privilege shall cease; and be it further

Resolved, That a copy of this resolution be forwarded to the Governor of the State of New Jersey, and to the State Senate, and to the General Assembly, and a copy given to the public press."

Speakers Tilt About Wilson

A slight tilt between two of the speakers surprised the gathering. Cozalino, the Newark labor leader, criticized President Wilson for vetoing the immigration bill because of the literacy test. This was surprising, because of the opposite stand of the American Federation of Labor.

Congressman-elect London took issue with the Newark leader, declared a change of policy was needed to relieve industrial conditions, and praised President Wilson and said his brain was the greatest of the age.

(Home News, Feb. 10, 1915.)

BOTTOM FALLS OUT OF STRIKE AT ROOSEVELT

Sheriff Houghton, Assisted by Others, Brings About a Settlement of Labor Difficulties—Company to Pay $1.80 Per Day and Take All the Strikers Back.

More than two hundred strikers at the plants of the American Agricultural and Chemical Company at Roosevelt returned to work this morning, and the indications are that the backbone of the strike has been definitely broken. The action of the strikers followed a busy day spent in their midst yesterday by Sheriff Edward F. Houghton, to whom credit for bringing the strike to an end is due.

On Monday evening the Sheriff was served with notice by the company that they had heard of threats against the plants and believed the properties were in danger. They called upon the Sheriff to act in his official capacity to prevent riots, and Sheriff Houghton left for the scene at 10 o'clock that night.

The Sheriff stayed until 1 a. m., then came home for a bit of sleep and was on his way to Roosevelt again at 5 o'clock yesterday morning. He spent the entire day in the strike zone and returned here last evening about 7:30 o'clock.

In consultation with the officials of the company, the Sheriff learned of a willingness on their part to tender the strikers $1.80 per day and take back all of the men who quit work, within the course of a week or so. A previous compromise offer was accompanied by the proviso that only such men as the company wished to re-employ would be taken back.

Summoned the Leaders

In conference with Mayor Hermann, of Roosevelt, and Dr. Jacoby, of that town, the Sheriff decided to call the leaders of the strike together and urge upon them the acceptance of the company's offer, which he believed would be to their interest. Accordingly, about fifteen of the strike leaders were summoned and an endeavor made to get them in line, that the men might be persuaded to return to work.

Finally, a mass meeting of the strikers was call-

(Cut here of Sheriff Houghton)
Who brought about strike settlement.

ed and the proposition laid before them. Its acceptance was urged by Dr. Jacoby and others, but was flatly turned down, only three of the strikers voting for its acceptance.

It was announced, however, that the offer held good for today, and word was received by the sheriff this morning that the men, to the number of over 200, were back to work. The bottom simply fell out of the strike, according to the best information obtainable and the men hastened to get their jobs back.

About 150 went to work at the Williams & Clark plant, and 100 at the Liebig plant. This number will be increased, the company promises, as work increases, and within two weeks the entire force is expected to be back at work.

Resume of Strike.

The strike began early last month and engaged nearly 800 men, who quit work because they were dissatisfied with their wage scale of $1.60 per day. Prior to October last they had been paid $2 a day and they asserted that the company had promised to increase the wages the first of January.

Considerable disorder marked the strike, resulting in the swearing in of strike deputies by Sheriff Houghton, who secured his men from the Jerry O'Brien Agency in Newark.

On Tuesday, January 19, a company of strikers were fired upon by the deputies, resulting in the deaths of two strikers at the Elizabeth Hospital.

Twenty-six of the deputies have since been indicted for murder, and with the exception of one, who is a fugitive from justice, are now held in the county jail awaiting trial.

(Home News, Feb. 11, 1915.)

ROOSEVELT STRIKERS YIELD.

Nearly Every Man Now at Work—Thronged Gates at 5 A. M. Today to Get Work at $1.80 Rate, After Nearly Unanimous Vote Last Night Favored Compromise.

Roosevelt, Feb. 11—Nearly every Roosevelt striker is back at work today. Those at the Armour plant are working for $2 a day. At the American Agricultural Chemical Company's plants the men are being paid $1.80 a day.

The strike was completely broken at a meeting yesterday afternoon, which resulted in a nearly unanimous vote at 6.45 o'clock last night to return to work.

This morning a crowd was gathered at the gates of the plants, waiting to be admitted to go to work. Yesterday the merchants of the city notified the strikers they would extend no more book credit. This is believed to have had something to do with the ending of the strike.

Tuesday the strikers voted not to accept the company's offer of $1.80 a day, a 20 cent increase over the daily wage at the time the strikers quit work. Yesterday, though about 200 returned to work. At noon an effort was made to get these to leave their places. It failed.

Yesterday afternoon the Sheriff talked with Division Superintendent C. Champion, and the latter extended for one day the time limit set by the company on the offer of $1.80 a day. The company had announced that if the men did not return to work yesterday the offer would close. But as soon as the Sheriff learned the limit would be extended one day, he and Assistant Superintendent Waring met with a committee of the strikers and again presented the offer. They ad-

dressed a gathering of 500 men and women in Van Nest Hall.

The sheriff was given an enthusiastic reception. He told the strikers there would be no discrimination against those who were active in the strike and that the only discrimination planned by the company was that married men should be given the first opportunity to return to work, and the others would be taken back on as soon as possible. This the strikers approved.

Sheriff Houghton seemed very popular with his audience. They appeared to regard him as a Moses to lead them out of the wilderness in which they found themselves and in which lurked starvation and gun-wounds and death and uncertainty. He made it very plain to his hearers that he was advising them for their own benefit.

When he had finished, the vote was taken. It was almost unanimous for a return to work.

(Home News, April 5, 1915.)

PUTS FOREIGN JURY UP TO SUPREME CT.

Justice Bergen Apparently in Doubt as to Legality of His Action in Granting Attorney General Wescott's Motion—"Bob" McCarter May Join Defense.

That the position taken by Joseph E. Stricker counsel for the men held in the county jail on murder charges growing out of the Roosevelt strike, was the correct one when he challenged the right of Justice Bergen to pass upon a motion for a foreign jury, sitting alone, is indicated today in an announcement from Trenton that Justice Bergen has suggested to Attorney General Wescott that the latter apply to the Supreme Court for a foreign jury in the case.

Justice Bergen apparently has been in doubt as to the validity of his action in granting Mr.

Wescott's application for a Mercer county jury to try the strike indictments, and accordingly, Mr. Wescott announces that he will apply on Thursday, April 15, before a branch of the Supreme Court at Trenton, for a foreign jury.

The branch in which his motion will be heard is composed of Justices Minturn, Kalisch and Swayze, and when the motion comes up for arraignment, Mr. Stricker will be prepared to combat it to the extent of his ability. The action of Justice Bergen in suggesting that Mr. Wescott apply to the Supreme Court is looked upon as a big legal victory for Mr. Stricker.

There is a prospect that interest will be added to the forthcoming trials of the twenty-five "deputies" by the retention of former Attorney General Robert H. McCarter, as associate counsel for the defense.

Up to the present time the defense has been conducted by former Assistant Prosecutor Joseph E. Stricker, unassisted, but to a Home News reporter this morning, Mr. Stricker admitted that he is seriously considering the retention of Mr. McCarter, and an announcement to that effect is expected within a day or two.

The injection of "Bob" McCarter into the fight will go far toward making it the greatest legal battle ever waged in the criminal courts of the county or state. McCarter's legal acumen is well known, and both he and Mr. Stricker are worthy foes for the counsel arrayed on the side of the prosecution.

Attorney General Wescott, and his second assistant, Mr. Backes, together with another attachee of his office, will be allied with Prosecutor Florance and Assistant Prosecutor Coan in presenting the State's case. As told in Saturday's Home News, the trial is expected to go on on Monday, May 24.

The question of the number of challenges to be allowed is an important one and certain to be threshed out at an early stage in the proceedings.

(Home News, April 6, 1915.)

C. BUMSTEAD FOREMAN OF GRAND JURY

Justice Bergen Surprises With a New Charge in Roosevelt Strike Case—Incidentally Rebukes Retiring Jury.

Charles W. Bumstead, vice president of the George W. Helme Co., of Helmetta, was named by Justice Bergen as foreman of the April Term Grand Jury, sworn in this morning. All of the men drawn on the jury presented themselves and were sworn in with the exception of Merritt J. MacAlinden, of Perth Amboy.

The jury is as follows:

Charles W. Bumstead, superintendent, Helmetta.

Ralph T. Holman, block-cutter, New Brunswick.

C. M. Liddle, contractor, Perth Amboy.

John C. Barlow, bookkeeper, Cranbury.

Edward Pfeiffer, farmer, Raritan.

Marious S. Darrow, assistant superintendent, Perth Amboy.

Charles K. Seaman, treasurer, Perth Amboy.

C. H. Rogers, undertaker, South River.

William Schlosser, merchant, New Brunswick.

N. W. Clayton, lumber, South River.

Edward Banker, plumber, New Brunswick.

George H. Bissett, druggist, Highland Park.

Leonard Scheidig, restaurant, New Brunswick.

Edward J. Gleason, superintendent, New Brunswick.

E. B. Latham, merchant, Dunellen.

James Avery, manufacturer, Madison.

John Hanson, Sr., real estate, Perth Amboy.

Otto O. Stillman, jeweler, New Brunswick.

James M. Wade, farmer, South Brunswick.

William Van Nuis, Jr., insurance, New Brunswick.

Howard Jamison, salesman, South Brunswick.

Augustine Cornell, foreman, Spotswood.

A. Clayton Clark, superintendent, Perth Amboy.

Another Strike Charge.

Justice Bergen, after directing the jury that they should pay particular attention to excise matters, not only in the interest of the general public, but for the protection of the law-abiding liquor dealers, surprised those assembled by referring to the Roosevelt strike, which had been made the subject of a special charge to the last Grand Jury. The court said:

"You are not to be controlled by the action of any previous Grand Jury in their refusal to find indictments or to complete investigations in any matter. I charged the last Grand Jury in relation to a strike at Roosevelt that if persons who claimed to be strikers gathered together and acted in a riotous and tumultuous manner, they should be indicted.

"The Grand Jury, I am informed, refused to present indictments of this character, but you are not controlled by that, and if you find the strikers gathered in a riotous manner, you should indict them. This may seem like a small matter, but it is a breach of the peace and possibly the punishment should be light, but that is outside of your province.

"If the Grand Jury refuses to interfere where the law has thus been violated, strikers may readily take it for granted that public sentiment is back of such actions, and more serious results may follow.

"All violators of the law should be punished,

and persons who institute a strike are not immune. It is wrong to excuse one set of men and indict another if both have been equally guilty."

Constables Grover and Lucas were assigned to wait upon the Grand Jury for the term and the members retired. After a brief session they adjourned until Thursday, April 29.

The December term Grand Jury completed its labors yesterday afternoon, the members being discharged with thanks by the court. No indictments were returned as a result of yesterday's session.

In connection with Justice Bergen's strike charge it will be recalled that the December term Grand Jury found a half dozen indictments against the strikers and their leaders for inciting to riot, carrying concealed weapons and obstructing railroad tracks, but the great body of the strikers were not indicted.

The law holds that a crowd consisting of 12 armed men and 30 unarmed men constitutes a riot. At Roosevelt there were several assemblages of several hundred men in each, many of them being armed.

(Home News, April 13, 1915.)

STRICKER ATTACKS THE FOREIGN JURY

Joseph E. Stricker, counsel for the twenty-five "deputies" held in the county jail on charges of murder growing out of the recent strike at Roose-

(Cut of Joseph E. Stricker.

Joseph E. Stricker

velt, today served notice on Attorney-General Wescott that he will apply to the Supreme Court on Thursday, April 15, to vacate the order for a foreign jury granted by Justice Bergen on April 3.

Intimations had been given Mr. Stricker that the attorney-general, who has assumed charge of

the prosecution of the "deputies," would apply to the Supreme Court on April 15 for a foreign jury order supplementing that of Justice Bergen. Subsequently, Mr. Stricker received word that Mr. Wescott's motion would not be made until a week later, or on April 22.

Consequently Mr. Stricker decided to "take the bull by the horns," and move to vacate the Bergen order. Several grounds are advanced by the counsel for the "deputies" in support of his motion. He sets forth that if Mr. Wescott had any fault to find with the drawing of the petit jury for the April term in the Middlesex court, that the attorney general "slept on his rights," or, in other words, waited until two days after the jury was drawn instead of interposing his objections at the proper time.

Mr. Stricker will also argue that Justice Bergen, sitting alone, had no right to grant the motion for a foreign jury, and, furthermore, if he had that right, there were no facts before him justifying his granting Mr. Wescott's motion.

It is also asserted by the defendants' counsel that the rights of the "deputies" are prejudiced by the foreign jury proposition, especially with relation to the matter of challenges. He sets forth that defendants in murder trials are permitted twenty challenges each with a domestic jury, and perhaps only five for each defendant, or possibly for all of them (that point to be determined later), with a foreign jury.

Another point advanced by Mr. Stricker is that the foreign jury law ignores the spirit of the Chancellor-Sheriff jury reform law, in that under the foreign jury law the entire panel of jurymen is drawn by one official, the sheriff, while under the reform law the sheriff and a jury commissioner draw the juries.

Argument on Mr. Stricker's motion will be

heard in a branch of the Supreme Court composed of Justices Swayze, Minturn and Kalisch.

(Home News, April 17, 1915.)

FOREIGN JURY ORDER IS VACATED;
FIGHT NEW MOTION NEXT SATURDAY

Attorney General Confesses Doubt as to Justice Bergen's Right to Act—Indicted "Deputies" to Plead Again, Thus Putting Case in the Supreme Court.

The second round of the battle between Attorney-General John W. Wescott, representing the prosecution of the Roosevelt strike "deputies," on the one side, and Joseph E. Stricker, counsel for the defendants, on the other side, was fought out at Jersey City today, and ended in a signal victory for Mr. Stricker.

On Saturday, April 3, the first round in this encounter was fought at Elizabeth, before Justice Bergen, when victory perched upon Mr. Wescott's banners. At that time, Justice Bergen granted a motion by the attorney general for a foreign jury, to be composed of Mercer county men, to try the murder indictments against the "deputies."

Today's battle was on a motion by Mr. Stricker to have Justice Bergen's order vacated and was argued before Justices Swayze, Minturn and Kalisch. Preliminary argument was heard on the motion before the same justices at Trenton, on Thursday, the matter being continued until today.

Mr. Wescott, with assistant attorney general Josiah Stryker, were on hand today when the court convened at Jersey City. They "threw up the sponge" so far as today's hearing was concerned, by admitting that there was no doubt as to Justice Bergen's authority to grant the foreign jury motion, sitting alone, this point being one of

those urged by Mr. Stricker as grounds for vacating the Bergen order.

Asked if they had any objection to the vacating of Justice Bergen's order, Messrs. Wescott and Stryker failed to respond, and the court promptly entered the vacating order.

Third Round In Fight.

It then became apparent that the battle is to have a third and decisive round, this time at Newark.

Mr. Wescott announced to Mr. Stricker and to Robert H. McCarter, former attorney general, who is associated with Mr. Stricker in defense of the "deputies," that he would apply for a writ of certiorari to have the foreign jury motion removed into the Supreme Court.

This statement indicated a new delay in the matter and Mr. Stricker at once announced that he was willing to waive notice in the premises and was willing to consider the question in the Supreme Court at once, and proceed with argument on the merits of the matter.

The attorney general demurred, stating that he required more time for consideration and it was accordingly arranged that he is to serve affidavits on the lawyers for the defense by Tuesday next, certifying to the "peculiar conditions" existing in Middlesex county and which he alleges as ground why a foreign jury should be ordered.

Men Will Plead Again.

This will be followed by a visit to this city on either Thursday or Friday next by Justices Swayze, Minturn and Kalisch, to take the pleas of the twenty-five "deputies" now held in the county jail. The taking of their pleas in this manner will operate to put the case into the Supreme Court. When the "deputies" pleaded before, it was before Justice Bergen alone.

The third round in the legal battle will take

place next Saturday, when the justices mentioned will sit in Chancery Chambers at Newark, and will then go into the merits of the foreign jury motion. That hearing is likely to settle the question finally.

During the discussion today before the court, Mr. Wescott made the remark that the strikers whom the "deputies" are accused of murdering were running away when they were shot and that the defendants fired upon them from the rear.

Mr. Stricker promptly called the court's attention to the fact that several strikers, who were in the company of the slain men, are under indictment in Middlesex at the present time, charged with inciting to riot, obstructing railroad tracks, carrying concealed weapons, and similar crimes.

The attorney general responded that he couldn't see that that had any bearing on the matter, and met the reply from Mr. Stricker that he thought it had as much bearing as the statement by Mr. Wescott, regarding the strikers having been shot in the back.

(Home News, April 2, 1915.)

WESCOTT DOESN'T TRUST MIDDLESEX JURORS TO TRY STRIKE SLAYERS.

Attorney General Springs a Last Minute Surprise, Moving for Foreign Jury to Try Roosevelt Deputies—Entire Trial Plans in Chaos—Prosecutor Moves for Severance of Indictments.

Attorney General Wescott believes Middlesex cannot produce a jury to give a fair trial to the twenty-five deputy sheriffs now in jail here on a charge of murdering two Roosevelt strikers, and will move tomorrow before Supreme Court Justice James J. Bergen, at Elizabeth, to have the deputies tried by a foreign jury from Mercer, his own county.

The news may be said to have stunned everyone in anyway interested in the trial, or in Middlesex court proceedure.

The Attorney General, who by virtue of his position has the authority to do things of this sort, notified Joseph E. Stricker, counsel for the accused men, of this intention, last night. As a result the criminal affairs of Middlesex County, are reduced to a chaotic condition. There is now the utmost uncertainty as to when the deputies are to be tried, and the circumstances of their trial.

The shooting occurred late in January. The indictments were returned early in February. Now, with the trial date only four days away, the Attorney General steps in with this motion, which is bound to make hash out of all the trial arrangements if it is granted, beside appearing to be a direct reflection on Middlesex jurors. Beside, the granting of this motion would impose a tremendous expense on Middlesex.

The expense menace looms all the larger, because of a second eleventh hour motion. This is to be made by Prosecutor W. Edwin Florance, who has informed Mr. Stricker that he will move before Justice Bergen tomorrow for a severance of the indictments, ten men to be tried first, and fifteen afterward.

Every man on the list of deputies is indicted on two murder charges, one charging the murder of Alesandro Desederio, and the other the murder of Kalman Batyi. This means that the first ten, if Mr. Florance's motion is granted, will be tried for the murder of one of the men, and then, if the course pointed out by the Grand Jury, which returned seperate indictments, is followed, for the murder of the other man. With the same thing occuring with respect to the second batch of fifteen, there would be four trials.

Complicates Situation.

In fact, the more consideration that is given the different aspects of the situation as it now stands, the more endless appears the series of possibilities which opens up. Mr. Florance's announcement was no less surprising than Mr. Wescott's. Only yesterday Mr. Stricker, who in the early days of his work for the defense, shortly after the indictments were returned, had announced he would attempt to have the defendants tried individually, said he had abandoned that idea, and that the trial would be called Tuesday, April 6, with the entire number responding as co-defendants. He was at that time obviously unaware of Mr. Florance's decision.

Just what the trials mean in the way of jurors is hard to estimate. Under the law counsel for the defense can challenge twenty men when a man is arraigned for murder or other serious crimes.

Another statute declares that in lesser crimes the defense is only allowed ten challenges. The state is allowed twelve challenges in murder trials. The question now raised is whether or not Mr. Stricker, as attorney for the defense, can rightfully claim twenty challenges for each defendant, who are to be tried jointly, or whether the fact that they are to be tried in groups of ten and fifteen will cause a waiver of this right and thus provide only twenty challenges for each batch.

It is almost a certainty that Justice Bergen, who will hear the case, will be asked to rule upon this question at an early stage in the proceedings.

Sheriff Edward F. Houghton has been on the anxious seat, on this score, because if the defense is allowed twenty challenges for each defendant—500 in all—he would have to "rustle" jurymen all day long to satisfy the demands of the law mill. If this view is taken by Justice Bergen it has been figured that the possible number of jurymen who

can be called for service in the trial would be 812. This allows 500 challenges for the defense, 300 for the state, and the twelve men selected to serve on the jury. Sheriff Houghton has said he would go out into the nearby offices, if commanded by Justice Bergen, and nab friend or foe for service, despite occupation. If talismen are called there will be no end of challenges, as neither side would hesitate on this privilege because of the large number allowed. The sheriff expected to keep his constables busy on that day rounding up talismen by the dozens, if instructed by Justice Bergen.

Wants Mercer Men.

But Attorney General Wescott's motion makes all this more uncertain than ever. What the Attorney General asks is that a venire be issued to the Sheriff of Mercer County to provide one hundred jurymen from that county, for the trial of both indictments. With eight hundred and twelve challenges at the disposal of counsel, the one hundred men would last about as long as a company charging a machine gun position.

If the one hundred should prove enough for the selection of the jury, the expenses would be great. But if re-inforcements had to be shipped from Mercer due to challenges, Middlesex would have a back-breaking burden imposed on its exchequer. And a further expense lies in the fact that a panel of 60 Middlesex jurymen has already been drawn and summoned to appear next Tuesday.

The Attorney General will contend tomorrow that the Supreme Court may in its discretion order a foreign jury wherever a fair and impartial trial cannot be had before a jury of the proper county. He cites the Quinlan case, at Paterson, when a foreign jury tried the I. W. W. leader.

The Attorney General will set forth that the jury for the April term was drawn by a Jury Commission of which Sheriff Houghton was a member,

and that by reason of the interest the Sheriff has in the case, he was "incompetent to assist in drawing the panel." The commission consists of Fred J. Cox, of Perth Amboy, and Sheriff Houghton. The jury is drawn before Judge Peter F. Daly. Now the Attorney General wants to do away with this panel, drawn by authorities of the county before the County Judge, and substitute one from his home county.

He will offer the following facts to gain his point. "Your Honor charged the Grand Jury on February 2, that the Sheriff appointed a number of what he called deputies, and they fired shots, and if the shots were fired without cause the so-called deputies should be indicted for murder. You said in your charge that the Sheriff had no authority to appoint the deputies and that the practise was in violation of the law. I believe it impossible to obtain a fair and impartial trial by any jury drawn in this manner, and that a fair trial cannot be secured in Middlesex County.

Stricker Will Fight Foreign Jury.

Mr. Stricker will appear in Elizabeth tomorrow to fight the motion to a finish. He will be the only opponent. Whether or not Prosecutor Florance is in sympathy with the motion, a point on which he has not spoken, he cannot logically oppose the motion of his superior officer.

The Defendants.

The ten men named by Prosecutor Florance in his motion for a severance of indictments, and who will be the batch first tried if his motion is granted are as follows: Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullin, Michael Manning, Harry Tone, John O'Mara, James Bavier, William McLaughlin, John C. Moran.

The point that is vague, however, is not whether or not the deputies will be tried in batches, but when they will be tried. If Attorney General Wes-

cott's motion is granted, it will be practically impossible to have the trial begin on Tuesday next. A new trial date will have to be set. There will, however, be no change in the place of trial. The trials will be here, in the county in which the crime occurred, whether or not they are before a Middlesex jury.

(Home News, Saturday, April 3, 1915.)

FOREIGN JURY FOR TRIAL OF DEPUTIES GRANTED: ALSO SEVERANCE ; TRIAL MAY 24.

Despite Strenuous Fight by Joseph E. Stricker, Justice Bergen Grants Both Motions—Mercer County Men Will Try the Strike "Deputies" in New Brunswick on May 24.

Elizabeth, April 3—Supreme Court Justice James J. Bergen today heard argument on the motion of Attorney General John W. Wescott for a foreign jury to try the indictments for murder against twenty-six "deputies' in connection with the Roosevelt strike. The motion was granted, after a hard fight put up by Joseph E. Stricker, counsel for the indicted men.

Justice Bergen also granted the motion of Prosecutor W. Edwin Florance, of Middlesex county, for a severance of the indictments found against the "deputies," whereby ten of the men will be placed on trial first.

Monday, May 24, was fixed by Justice Bergen as a tentative date for the beginning of the trials of the "deputies," which had been scheduled for next Tuesday. It is possible that the trials will be moved a week earlier than the date the justice set or on May 17, but this is considered unlikely.

Justice Bergen's order issued at the close of the hearing this morning, directs the sheriff of Mercer county to draw a venire of 100 men from that coun-

ty, from whom the murder jury must be drawn. Mr. Stricker declared that Prosecutor Florance did not join in the motion for a foreign jury, but Assistant Prosecutor John A. Coan, representing Mr. Florance, replied that this was untrue and that Mr. Florance had united in the motion.

The hearing this morning on the motion for a foreign jury was late in starting, owing to the fact that Attorney General Wescott didn't reach the court house until 11 o'clock.

In the meantime, Mr. Coan urged the motion for a severance of indictments and said that Prosecutor Florance was convinced such a severance was necessary in the interests of justice. Mr. Stricker challenged the right of the court to grant a severance and said that this right formerly existed under the Act of 1864, but was voided by the Act of 1871, which provided that a defendant could be a witness.

Overrules Stricker.

Justice Bergen overruled Mr. Stricker, although the latter called attention to the fact that he had prepared the defense on the theory that the indicted men would all be tried together. Mr. Stricker said he was certain that Mr. Florance has no more testimony in the case than he has, and that he was willing to swear that a severance of indictments was not necessary.

Mr. Coan declared that the testimony at the command of the State was not the same as that known to Mr. Stricker, whom he said, was anxious only to see all the defendants acquitted, while the State's interest was in seeing justice done. Mr. Stricker broadly intimated a breach of faith on the part of Mr. Florance, stating that the latter had sent him a letter on March 2, to the effect that the case would proceed against all the defendants together.

The attention of the court was called by Mr.

Stricker to the fact that when he wanted a severance of indictments, it was stipulated that he furnish an affidavit stating the grounds on which the motion was based, and he said he had not been supplied with any affidavit by Mr. Florance. Counsel for the defendants also asserted that he was ready to go to trial on Tuesday next, and argued there was nothing before the court to justify a severance.

"The county of Middlesex faces a big expense in connection with this case," said Mr. Stricker, "and it is wrong to have two, three or four trials if that can be avoided. Then, too, Your Honor, can only give from April 6 to 14 to the case, and it would be wrong to try ten of the indicted men and make the rest await trial until next September."

At this juncture, Attorney General Wescott arrived, and supported Mr. Coan in his motion for severance. Mr. Wescott said it was not necessary for the State to disclose its hand by telling its reasons for the motion.

In granting the motion, Justice Bergen supported this contention, and said with relation to the expense item, that while expense should be considered, the court could not do an injustice to save expenses. He added that he believed the interests of none of the defendants will be jeopardized by the severing of the indictments.

The Foreign Jury.

The attorney general, in support of his motion for a foreign jury, said the action of Sheriff Houghton in appointing strike "deputies" was a direct violation of the law and disqualified the sheriff from assisting in drawing the trial jury. "The situation created by this crime is unusual," said Mr. Wescott. "The eyes of the entire nation are upon New Jersey. This is a clash between

capital and labor, and that it was impossible to draw an impartial jury in Middlesex county.

"It is obvious that the Middlesex Sheriff committed a serious blunder in appointing these "deputies," and for him to assist in drawing the jury that will try the men he swore in is a gross impropriety. That action is enough in itself to justify Your Honor in granting our motion."

Answering Mr. Wescott, counsel for the defense said the fact that the case bears a nation-wide aspect constituted no reason why a foreign jury should be chosen, and that if the Middlesex sheriff had committed a blunder, it was one similar to those committed by other sheriffs of New Jersey for many years.

He continued: "Conceding the law as laid down by Your Honor in this matter to be undebateable, the sheriff's blunder is not chargeable to these defendants. Your Honor did not instruct the Grand Jury to indict the sheriff and he is not on trial. Furthermore, Mr. Wescott stood by and let Sheriff Houghton draw the jury for the April term of the Middlesex court and made no objection.

Discredit Jury Law.

"The jury was drawn according to the 'Reform Jury Law,' and are we to witness the spectacle of this law being openly discredited by the attorney general of the State? Why does Mr. Wescott name Mercer county as the one from which to draw the jury. Is it because that is where he has his offices and where the man who will assist him in prosecuting this case have been practicing for years?"

Mr. Stricker also questioned the court's jurisdiction, saying that before Justice Bergen could pass upon the motion, the indictment would have to be moved into the Supreme Court, and quoted authorities in support of this contention, main-

taining that the entire Supreme Court and not an individual justice should pass upon such an important matter.

In conclusion, Mr. Stricker emphasized the fact that Sheriff Houghton had apprehended the "deputies" and has detained them awaiting trial, and that there was nothing before the court to show that the Middlesex jury for the April term would give anything but an impartial trial to the defendants. He suggested also, that if a foreign jury were decided upon, that it be selected from either Somerset or Union counties.

The attorney general retorted that he had mentioned Mercer as the place to draw the jury from because it was most accessible to Middlesex and more economical for the transportation of jurymen.

"Jerry" O'Brien, of Newark, head of the detective agency from which the strike "deputies" were secured by Sheriff Houghton, was an interested spectator at today's hearing.

The "deputies" have already spent several weeks in the Middlesex county jail, and they are now certain to be compelled to remain there until May 24, the new trial date, if not longer.

State of New Jersey, County of Middlesex, ss:

Arthur Reichmann, of full age, being duly sworn according to law, on his oath says, I reside in the city of Perth Amboy. I am a compositor, a member of the Typographical Union. I have talked with many laboring men of the city of Perth Amboy about the trial of the indicted deputy sheriffs. From my association with them and the opinions expressed I believe that a fair and impartial trial cannot be had before them in the said trial, because they have prejudiced the case and are hostile and bitter against Sheriff Houghton and his deputies. The general opinion among all men with whom I associate is that a fair and impartial trial of the said case cannot be had before a jury drawn from Middlesex county and this I also personally believe.

ARTHUR REICHMANN.

Sworn and subscribed before me,
this 19th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

William J. Dayle, of full age, being duly sworn according to law, on his oath says that I reside in Perth Amboy, New Jersey. That I am a delegate from the Electricians Union and Central Labor Union, of Perth Amboy. That I have talked to at least one hundred persons about this strike at Roosevelt and the shooting which took place on the nineteenth of January, 1915, and from the opinions which I have heard expressed and from the general sentiment to the best of my knowledge and belief, I do not believe that a fair and impar-

tial trial could be had in Middlesex County from any jury selected in Middlesex County.

WM. J. DAYLE.

Sworn and subscribed before me,
this 19th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

George Evans, of full age, being duly sworn according to law, on his oath says: I am a resident of Perth Amboy and a painter. I am a delegate to the Central Labor Union. I have talked with many laboring men and also business men in and about the city of Perth Amboy about the trial of the indicted deputy sheriffs and from the opinions I have heard expressed and from the general sentiment which exists, I do not believe that a fair and impartial trial of the said deputy sheriffs can be had before a jury drawn from Middlesex county. I find that the men with whom I associate have prejudiced the case and have definite opinions either that the defendants are guilty or are not guilty or should be acquitted or convicted and that many have a strong interest either in the acquittal or conviction of these men. The sentiment of those with whom I talk is almost unanimous that a fair trial is impossible before a jury drawn from Middlesex County.

GEORGE EVANS

Sworn and subscribed before me
this 19th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

William W. Sellers, being duly sworn accord-

ing to law, says that: I am the business agent of the Bricklayers and Masons Union of Perth Amboy, New Jersey. That I reside at Perth Amboy. That I have talked to many citizens of Perth Amboy, both members of my union and other residents of this vicinity and to best of my knowledge and belief after hearing these remarks and judging the sentiment I do not believe that a fair and impartial trial could be obtained before a jury selected in Middlesex county.

WILLIAM W. SELLERS.

Sworn and subscribed before me
this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

J. Otto Nelson, of full age, being duly sworn according to law, on his oath says that: I reside in Perth Amboy, New Jersey. Says that I am a newspaper reporter and furnish news to various New York and New Jersey dailies. That I have heard opinions repeatedly expressed in Perth Amboy that a fair and impartial trial could not be held in Middlesex County of the men indicted for murder in connection with the Roosevelt strike. That from the sentiment here and from opinions expressed which I have heard, I do not believe that a fair and impartial trial could be obtained from a jury selected in Middlesex County.

J. OTTO NELSON.

Sworn and subscribed before me
this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Jesse W. Davis, Secretary of the Central Labor

Union of Perth Amboy, New Jersey, being duly sworn according to law, on his oath says that I reside in Perth Amboy, New Jersey. That I am a member of the Painters' Unions. That I have talked to many members of the Union and to many citizens residing in this vicinity, to the best of my knowledge, information and belief after hearing these sentiments expressed I am of the opinion that a fair and impartial trial of the men indicted could not be had before a jury selected from Middlesex County.

JESSE W. DAVIS.

Sworn and subscribed before me
this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

William Weinberger, of full age, being duly sworn according to law, on his oath says: I am a resident of Perth Amboy and am a cigarmaker. I have talked with many laboring men and also business men in and about Perth Amboy concerning the trial of the indicted deputy sheriffs and according to the best of my knowledge, information and belief found from such conversations and the opinions expressed (I do not believe that) struck before signing a fair and impartial trial could not be had before a jury drawn from Middlesex county. I find the laboring men prejudiced against the said deputy sheriffs and anxious for their conviction and unfit because of such prejudice to sit as jurors in the said case. I find many other citizens who are prejudiced in favor of the sheriff and his deputies and before whom I believe it would be impossible to secure a conviction of the said men. The sentiment of all the people with whom I associate is

strong that because of the prejudice for and against the said deputies a fair trial is impossible before a Middlesex jury, and this is my own opinion and belief.

WM. WEINBERGER.

Sworn and subscribed before me
this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Alfred DePrado, of full age, being duly sworn according to law, says that: I reside in Perth Amboy, New Jersey. That I am delegate from the International Brick, Tile and Terra Cotta Workers' Union. That from the sentiment expressed which I have heard, I do not believe that a fair and impartial trial of the men indicted for murder at Roosevelt could be had before a jury selected from Middlesex County.

ALFRED DE PRADO.

Sworn and subscribed before me
this 19th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Charles Guarino, being duly sworn according to law, on his oath says, that I reside in Perth Amboy, New Jersey; that I am a barber, and that I have talked to about fifty people and from the opinions expressed and from the general sentiment so far as I have been able to ascertain, I do not believe that a fair and impartial trial could be had in Middlesex County of the men indicted

for murder in connection with the Roosevelt strike.

CHARLES GUARINO.

Sworn and subscribed before me,
this 19th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Peter C. Peterson, of full age, being duly sworn according to law, on his oath says, that I reside at Perth Amboy, New Jersey; that I do not believe that a fair and impartial trial could be had in Middlesex County, of the men indicted for murder in connection with the shooting at Roosevelt, before a jury selected in Middlesex County.

PETER C. PETERSON.

Sworn and subscribed before me,
this 19th day of April, 1915.

JOSEPH LANIGAN,
Notary ublic, N. J.

State of New Jersey, County of Middlesex, ss:

George A. Solt, of full age, being duly sworn according to law, on his oath says: I am a plumber residing at Metuchen, in the County of Middlesex. I have talked with many citizens of the said county concerning the trial of the indicted deputy sheriffs and from their remarks and opinions expressed to me and from my own opinion formed from all the circumstances of the case I do not believe that a fair and impartial trial can be had before a jury of the county of Middlesex. According to the best of my knowledge, information and belief, the feeling of the people with whom I associate both of the laboring men and other

classes is so strong and prejudiced that they are not competent to render an impartial verdict in the said trial.

GEO. A. SOLT, Amboy Ave., Metuchen, N. J.

Sworn and subscribed before me
this nineteenth day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex: ss

Edwin S. Quinn, of full age being duly sworn according to law, on his oath says that I have lived in Middlesex County for twenty-three years; my business is fire and life insurance; my business takes me in all parts of the county; since the shooting affair on the 19th day of January last I have talked to large numbers of people and they have talked to me about the affair. Their views and expressions are positive and deep; some favor Sheriff Houghton and others condemn him; some condemn the strikers; many condemn the deputies. The strike caused great excitement throughout the county; from these expressions of opinion throughout the county, I am convinced that an impartial jury could not be obtained to try these defendants from the body of the county.

EDWIN S. QUINN,

Sworn and subscribed before me
this 20th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Henry J. Harrington, of full age, being duly sworn according to law, on his oath says that I am Chief of Police of the Borough of Roosevelt.

That on numerous occasions and at numerous places I have talked with citizens of Middlesex County about the shooting affair which took place on the morning of January 19th, 1915, at the Williams & Clark plant, and I uniformly found the sentiment against the defendants strong and bitter, and my opinion is, based upon such knowledge, that it would be difficult, if not impossible to obtain a jury that would give the defendants a fair and impartial trial in Middlesex County.

HENRY J. HARRINGTON.

Sworn and subscribed before me
this 20th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Wililam C. Rapp, Jr., of full age, being duly sworn according to law, on his oath says that I have talked to at least one hundred citizens in Roosevelt, Chrome and Carteret about the shooting which took place at the Williams & Clark plant on January 19th, 1915; that without exception each of the persons with whom I discussed this matter expressed strong feeling against the deputies charged with doing the shooting; that the sentiment in the localities above mentioned is so strong against the deputies, that in my opinion it would be impossible to find jurors from this section who would be unprejudiced.

W. C. RAPP, Jr.

Sworn and subscribed before me
this 20th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

State of New Jersey, County of Middlesex, ss:

Harry C. Rapp, of full age, being duly sworn according to law, says that I have lived in this part of the State for fifteen years, namely: Carteret and Roosevelt; I am a plumber by trade; I have heard many people talk about the Carteret shooting affair; this shooting caused great excitement and deep feeling; the feeling against the deputies is very bitter.

HARRY C. RAPP.

Sworn and subscribed before me this 20th day of April, 1915.

JOSEPH LANIGAN,
Notary Public, N. J.

In the matter of the application of John W. Wescott, attorney general of the State of New Jersey for a foreign jury in the trial of the indictment found by the grand inquest of the county of Middlesex for the murder of Alesandro Tessitore.

Affidavit of Edward F. Houghton, Sheriff of Middlesex County.

State of New Jersey, county of Middlesex, ss:

Edward F. Houghton of full age, being duly sworn according to law upon his oath deposes and says: I was elected at the election held in November, 1914, as sheriff of the county of Middlesex and I qualified as such on the 11th day of November.

1. During the month of October, 1914, Jury Commissioner Fred J. Cox and my predecessor, Sheriff Arthur B. Appleby, prepared a list of five hundred names of citizens of the county of Middlesex, as required by law, and also a list of three hundred names from which the grand juries were to be drawn. These lists were signed by said jury commissioner and my said predecessor, Arthur B. Appleby, submitted to the Honorable James J. Bergen, justice of the Supreme Court, presiding in this circuit, who on November 2nd, 1914, ordered that the petit and grand juries be drawn at the Court House on the 22nd day of November, 1914. In accordance with this order a jury was drawn by myself, I having qualified as sheriff since preparation of lists and prior to day set for drawing and the jury commissioner, Fred J. Cox, in the presence of the Court, from the above list.

2. During the month of February, 1915, there were furnished by myself and the said jury commissioner, Fred J. Cox, names which were added to said list and in substitution of those which had been withdrawn therefrom for the making up of the panel for the December Term, as above stated and those which had been withdrawn from said list because of disqualification on account of age. The total number thus added by me amounted to eighty-three. This last-mentioned number are the only names with the selection of which I had anything to do.

3. The list for the April Term, 1915, both petit and grand jury was submitted to the Honorable James J. Bergen on March 6th, 1915, and he signed an order directing that on March 26th, 1915, the petit and grand juries be drawn from such list. This was done in the manner required by law and in open court, Judge Peter F. Daly, presiding, with the result that the panel which is hereto annexed and made a part of this affidavit was drawn.

4. The names of the jurors who appear on the present panel and whose names were placed on the list by Commissioner Cox and myself and which were suggested by me are as follows: Ellsworth Gulick, John Payton, of New

Brunswick; Howard Bright, Milltown; John Parkinson and George Van Deventer, South River. These five jurors are the only ones suggested by me drawn from the list of five hundred, which said list was prepared by my predecessor, I having only to do with supplying the additional names in substitution of those withdrawn for the making up of the December panel in 1914, and this with the assistance of the jury commissioner, Fred J. Cox. The remaining fifty-five names of present panel of sixty drawn as above stated were not placed in five hundred list by me and I had nothing to do with their being on that list, this having been selected by my predecessor Sheriff Appleby and Commissioner Cox.

Sworn and subscribed to before me this
14th day of April, 1915.

EDWARD F. HOUGHTON.

JOHN P. KIRKPATRICK,
Master in Chancery of New Jersey.

State of New Jersey, } ss:
County of Middlesex. }

State of New Jersey, county of Middlesex, ss:

Fred J. Cox, of full age, being duly sworn according to law, upon his oath deposes and says that he is the jury commissioner named in the foregoing affidavit; that he has read said affidavit and that the contents thereof are true to the best of his knowledge and belief.

Sworn and subscribed to before me this
15th day of April, 1915.

FRED J. COX.

HYMAN FRIEDMAN,
Notary Public, New Jersey.

(Endorsement)

NEW JERSEY SUPREME COURT

State of New Jersey

vs.

Robert J. Wallace et. al.

On Certiorari

Indictment for the murder of Alesandro Tessitore

On motion for a foreign jury

Order

Filed, May 11th, 1915.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT

Application of John W. Wescott, attorney general, for a foreign jury in State vs. Robert J. Wallace et. al.

The Attorney General and Mr. Stryker—For the motion.

George W. C. McCarter, Joseph E. Stricker and Robert H. McCarter—Opposed.

Before Justices Swayze, Minturn and Kalisch.

PER CURIAM:

We think that the evidence in this case requires the conclusion that a fair and impartial trial cannot be had before a jury of Middlesex county. We are aware of the serious nature of our action and are most reluctant to take it. It, of course, ought not to be taken unless the case is a clear one, but the newspaper clippings that were submitted to us show that there is a disposition on the part of the public press in New Brunswick to try the case outside of the court room and the character of the publications is such that it must inflame the public mind against the State. We think, therefore, that a venire should issue to the sheriff of the adjoining county of Mercer in accordance with section 79 of the Criminal Procedure Act.

Filed May 7, 1915.

WM. C. GEBHARDT, Clerk.

NEW JERSEY SUPREME COURT

State of New Jersey vs. Robert J. Wallace et. al.	On Certiorari. Indictment for the murder of Alesandro Tessitore. On Motion for a foreign jury. Order.

This matter coming on to be heard in the presence of John W. Wescott, Attorney General of the State of New Jersey, and Joseph E. Stricker and Robert H. McCarter, Attorneys and of Counsel for the defendants above named, the Court having examined the affidavits and proofs submitted, and having heard the arguments of counsel, as well for the defendants as for the State, and it appearing to the Court that a fair and impartial trial of the above-mentioned indictment found by the Grand Inquest of the County of Middlesex, cannot be had before a jury selected from the County of Middlesex, it is on motion of John W. Wescott, Attorney General made, in behalf of the State, in open Court, ORDERED that the above-mentioned indictment shall be tried before a Foreign Jury, drawn from the County of Mercer, and that a venire shall be directed to the Sheriff of the County of Mercer for the summoning of one hundred jurors from the body of the County of Mercer, said jurors to be selected in the same manner as the general panel of jurors of said County of Mercer is now selected, and to be such as are com-

petent jurors for the said County of Mercer, which said venire shall be returnable to the Circuit Court of the County of Middlesex.

It is further ordered that the said cause be retained in this Court to be carried down for trial of the issue joined therein at the Middlesex County Circuit before such Justice of the Supreme Court as shall hold such Circuit, and that Monday the twenty-fourth day of May, nineteen hundred and fifteen be fixed for the trial of said issue subject to the right of the said Justice holding said Circuit to postpone said trial.

By the Court.

F. J. SWAYZE,

Justice.

Entered, May 11, 1915. On motion of

JOHN W. WESCOTT,

Attorney General.

NEW JERSEY SUPREME COURT

State of New Jersey vs. Robert J. Wallace et. al.	On Indictment for murder.

I, J. Warren Fleming, Sheriff of the County of Mercer, return that I have executed the annexed writ by serving with summons to appear in accordance with said writ, the following persons whose names appear upon the annexed List or Panel, certified by Erwin E. Marshall, Esq., President Judge of the Court of Common Pleas of Mercer County as the List of duly qualified persons constituting the anel of Petit Jurors from Mercer County to serve before such Supreme Court Justice as shall hold the Circuit Court in and for the County of Middlesex on the twenty-fourth day of May, 1915, on the trial of the issue between the State of New Jersey and Harry Patterson, et. al.

1. Francis Hickey, 71 Lamberton street, Trenton, Fourth Ward, Musician.
2. Clarence E. Pullen, 678 Lamberton street, Trenton, Fourth Ward, Paperhanger.
3. Albert Imhof, 626 Division street, Trenton, Eleventh Ward, Wiredrawer.
4. Farley F. Holcomb, Broad street, Hopewell, Hopewell Township, Retired.
5. Charles Blauth, 555 S. Broad street, Trenton, Third Ward, Retired.
6. John V. Green, Trenton, R. F. D. No. 4, Lawrence Township, Farmer.
7. Richard W. Cook, Lawrenceville, Lawrence Township, Retired.
8. Philip J. Booz, White Horse Road, Hamilton Township, Floorman.
9. Percy R. Bickford, 120 Nassau street, Prince-

ton, Princeton Township, Building Inspector.

10. David Scudder, Columbia avenue, Hopewell, Hopewell Township, Laborer.
11. Albert H. Bradshaw, 212 N. Clinton avenue, Trenton, First Ward, Merchant.
12. Walter Eldridge, Lawrenceville, Lawrence Township, Farmer.
13. Harry Bentley, 241 Adeline street, Trenton, Eleventh Ward, Wireworker.
14. George Staples, Hopewell, Hopewell Township, Blacksmith.
15. Joseph F. Gribbon, 13 E. Lafayette street, Trenton, First Ward, Musician.
16. Lewis P. Fuhrman, 41 Anderson street, Trenton, Tenth Ward, Machinist.
17. Harry B. Morris, Stockton street, Hightstown, East Windsor Township, Laundryman.
18. John A. Dennish, 19 Livingston street, Trenton, Third Ward, Barber.
19. William L. Berrien, 16 E. Delaware avenue, Pennington, Hopewell Township, Garage Proprietor.
20. Harry Harbourt, Hightstown, East Windsor Township, Insurance Agent.
21. William H. Lyons, Jr., 39 Wiggins street, Princeton, Princeton Township, Merchant.
22. Horace E. Case, 111 E. Hanover street, Trenton, First Ward, Bookkeeper.
23. Richard Wyckoff, 271 Tyler street, Trenton, Tenth Ward, Retired.
24. Edwin N. Lee, 216 Hamilton avenue, Trenton, Ninth Ward, Retired.
25. Clinton B. Higgins, 247 Hillcrest avenue, Trenton, Fourteenth Ward, Cornice Works.
26. Joseph G. Drake, Union street, Hopewell, Hopewell Township, Painter.
27. Herbert D. Williams, 414 Market street, Trenton, Third Ward, Mattress Maker.

28. Charles C. Bahrenburg, Pennington, Hopewell Township, Farmer.
29. Karl Weissert, 144 Old Rose street, Trenton, Fifth Ward, Confectioner.
30. William S. Bond, Hopewell, Hopewell Township, Retired.
31. William R. Large, 111 Woodside avenue, Trenton, Fourteenth Ward, Clerk.
32. Redford P. Dey, Windsor, Washington Township, Farmer.
33. James M. Mathews, Trenton, R. F. D. No. 1, Ewing Township, Blacksmith.
34. John Morgan, 44 W. Lafayette street, Trenton, Second Ward, Bar Clerk.
35. James Chamberlain, Hamilton Square, Hamilton Township, Real Estate.
36. Elwell S. Clugston, 35 Kent street, Trenton, Tenth Ward, Machinist.
37. Charles Hauer, 9 Hewitt street, Trenton, Eleventh Ward, Engineer.
38. Walter S. Burchell, 314 Rutherford avenue, Trenton, Thirteenth Ward, Clerk.
39. Joseph A. Nicholson, 39 Spring street, Trenton, Thirteenth Ward, Clerk.
40. Thomas D. Stelle, Yardville, Hamilton Township, Farmer.
41. Joseph F. Lenox, 912 Berkeley avenue, Trenton, Fourteenth Ward, Decorator.
42. Charles B. Hight, 510 W. Hanover street, Trenton, Thirteenth Ward, Carpenter.
43. James Kane, 526 S. Warren street, Trenton, Fourth Ward, Retired.
44. Walter C. A. Henney, 1138 Hamilton avenue, Trenton, Twelfth Ward, Bookkeeper.
45. Elmer E. Remsen, 126 Kent street, Trenton, Tenth Ward, Potter.
46. Charles J. Housel, 150 Perry street, Trenton, Seventh Ward, Manager.
47. Richard Lanning, Lawrenceville, Lawrence

Township, Farmer.

48. Russell Hooper, Hamilton Square, Hamilton Township, Clerk.

49. Raymond Hutchinson, Trenton, R. F. D. No. 3, Hamilton Township, Clerk.

50. William F. Hilderbrandt, Pennington, Hopewell Township, Farmer.

51. Frank L. Reed, 52 Charles street, Trenton, Tenth Ward, Produce Dealer.

52. Charles Furman, 130 E. Front street, Trenton, First Ward, Liveryman.

53. Liscomb B. Titus, Hopewell, Hopewell Township, Farmer.

54. Harry H. Farr, 42 Wiggins street, Princeton, Princeton Township, Merchant.

55. Charles H. Latourette, Charlton street, Princeton, Princeton Township, Magazine.

56. Josiah Hollies, 224 Beechwood avenue, Trenton, Fourteenth Ward, Merchant.

57. George W. Aller, Sr., 9 W. Front street, Trenton, Second Ward, Produce.

58. William W. Lukens, 165 Nassau street, Princeton, Princeton Township, Contractor.

59. Phillip Bennett, 62 Nassau street, Princeton, Princeton Township, Printer.

60. Simeon Middleton 102 Jackson street, Trenton, Third Ward, Retired.

61. Reuben Farr, Snowden Lane, Princeton, Princeton Township, Farmer.

62. Charles H. Christopher, 13 Hampton street, Trenton, Twelfth Ward, Blacksmith.

63. Charles Lavine, 20 Greenwood avenue, Trenton, Third Ward, Merchant.

64. Samuel B. Wear, 624 Perry street, Trenton, Fifth Ward, Newsdealer.

65. William Wiley, Cranbury, R. F. D. No. 2, West Windsor Township, Machinist.

66. J. Baldwin Drake, Hopewell, Hopewell Township, Garage.

67. Thomas McCullough, 456 W. Hanover street, Trenton, Thirteenth Ward, Concrete Wkr.
68. Christopher H. Andreas, 549 Brunswick avenue, Trenton, Fifth Ward, Cafe.
69. Albert Wooley, 689 Center street, Trenton, Sixth Ward, Salesman.
70. George R. Cox, 127 Girard avenue, Trenton, Eighth Ward, Carpenter.
71. John W. Hendrickson, 441 W. Hanover street, Trenton, Thirteenth Ward, Canvasser.
72. William Adams, 435 Center street, Trenton, Fourth Ward, Wireworker.
73. David C. Johnson, 63 Carroll street, Trenton, First Ward, Superintendent.
74. Edward B. Skellinger, 851 Hamilton avenue, Trenton, Twelfth Ward, Retired.
75. Alexander L. Berrien, Alex street, Princeton, Princeton Township, Real Estate.
76. Edward Farley, 53 Spring street, Trenton, Thirteenth Ward, Bill Poster.
77. Chris. Stenger, 112 Washington street, Trenton, Tenth Ward, Potter.
78. John F. Hartman, 918 Chestnut avenue, Trenton, Eleventh Ward, Watchmaker.
79. George Fitzgeorge, 128 S. Stockton street, Trenton, First Ward, Druggist.
80. Harry Bratton, 918 Lamberton street, Trenton, Sixth Ward, Potter.
81. Clarence E. Stead, 168 Nassau street, Princeton, Princeton Township, Undertaker.
82. Benjamin L. Hartman, 2204 S. Broad street, Trenton, Hamilton Township, Fruit Dealer.
83. George Koenig, 509 S. Warren street, Trenton, Fourth Ward, Delicatessen.
84. Thomas Jordan, 628 Division street, Trenton, Eleventh Ward, Jeweler.
85. Edgar S. Crider, Yardville, Hamilton Township, Miller.
86. Lewis S. Stout, 637 Indiana avenue, Trenton,

Eighth Ward, Rubberworker.

87. Thomas L. Davis, 215 Lafayette avenue, Trenton, Hamilton Township, Salesman.

88. Lawrence J. Sweeney, 723 Princeton avenue, Trenton, Fifth Ward, Confectioner.

89. William H. Holcomb, 19 Franklin street, Pennington, Hopewell Township, Laborer.

90. Fred Kemler, 317 S. Broad street, Trenton, Third Ward, Tailor.

91. Anthony Vanhise, 18 S. Warren street, Trenton, First Ward, Undertaker.

92. John H. Bahrenburg, 101 Greenwood avenue, Trenton, Ninth Ward, Ice Dealer.

93. Elwood Lawrence, Law Road, Princeton Township, Carpenter.

94. John H. Neale, 841 Stuyvesant avenue, Trenton, Thirteenth Ward, Clerk.

95. Charles Sorter, Princeton, R. F. D. No. 3, Princeton, Farmer.

96. James F. Collis, Sr., Hamilton Square, Hamilton Township, Rubberworker.

97. Harry S. Walsh, Trenton, R. F. D. No. 1, Ewing Township, Stenographer.

98. Harry E. Crossey, 17 E. Lafayette street, Trenton, First Ward, Paperhanging.

99. John S. Mount, Dutch Neck, West Windsor, Township, Carpenter.

100. Joseph E. Hart, 30 Hart avenue, Trenton, Fifth Ward, Rubberworker.

The following persons were not served because they could not be found for service with such summons within the County of Mercer:

Thomas Jordan, 628 Division street. Deceased.

Harry E. Crossey, 17 E. Lafayette street. Had left State and is now residing at 619 West Ninth street, Wilmington, Delaware.

Dated, May 22, 1915.

J. WARREN FLEMING,
Sheriff.

List of duly qualified persons constituting the panel of Petit Jurors for Mercer County to serve before such Supreme Court Justice as shall hold the Circuit Court in and for the County of Middlesex, on the twenty-fourth day of May, 1915, in the trial of an issue between the State of New Jersey and Harry Patterson et. al.:

1. Francis Hickey, 71 Lamberton street, Trenton, Fourth Ward, Musician.
2. Clarence E. Pullen, 678 Lamberton street, Trenton, Fourth Ward, Paperhanger.
3. Albert Imhof, 626 Division street, Tenton, Eleventh Ward, Wiredrawer.
4. Farley F. Holcomb, Broad street, Hopewell, Hopewell Township, Retired.
5. Charles Blauth, 555 S. Broad street, Trenton, Third Ward, Retired.
6. John V. Green, Trenton, R. F. D. No. 4, Lawrence Township, Farmer.
7. Richard W. Cook, Lawrenceville, Lawrence Township, Retired.
8. Philip J. Booz, White Horse Road, Hamilton Township, Floorman.
9. Percy R. Bickford, 120 Nassau street, Princeton, Princeton Township, Building Inspector.
10. David Scudder, Columbia avenue, Hopewell, Hopewell Township, Laborer.
11. Albert H. Bradshaw, 212 N. Clinton avenue, Trenton, First Ward, Merchant.
12. Walter Eldridge, Lawrenceville, Lawrence Township, Farmer.
13. Harry Bentley, 241 Adeline street, Trenton, Eleventh Ward, Wireworker.
14. George Staples, Hopewell, Hopewell Township, Blacksmith.
15. Joseph F. Gribbon, 13 E. Lafayette street, Trenton, First Ward, Musician.

16. Lewis P. Fuhrman, 41 Anderson street, Trenton, Tenth Ward, Machinist.
17. Harry B. Morris, Stockton street, Hightstown, East Windsor Township, Laundryman.
18. John A. Dennish, 19 Livingston street, Trenton, Third Ward, Barber.
19. William L. Berrien, 16 E. Delaware avenue, Pennington, Hopewell Township, Garage Proprietor.
20. Harry Harbourt, Hightstown, East Windsor Township, Insurance Agent.
21. William H. Lyons, Jr.; 39 Wiggins street, Princeton, Princeton Township, Merchant.
22. Horace E. Case, 111 E. Hanover street, Trenton, First Ward, Bookkeeper.
23. Richard Wyckoff, 271 Tyler street, Trenton, Tenth Ward, Retired.
24. Edwin N. Lee, 216 Hamilton avenue, Trenton, Ninth Ward, Retired.
25. Clinton B. Higgins, 247 Hillcrest avenue, Trenton, Fourteenth Ward, Cornice Works.
26. Joseph G. Drake, Union street, Hopewell, Hopewell Township, Painter.
27. Herbert D. Williams, 414 Market street, Trenton, Third Ward, Mattress Maker.
28. Charles C. Bahrenburg, Pennington, Hopewell Township, Farmer.
29. Karl Weissert, 144 Old Rose street, Trenton, Fifth Ward, Confectioner.
30. William S. Bond, Hopewell, Hopewell Township, Retired.
31. William R. Large, 111 Woodside avenue, Trenton, Fourteenth Ward, Clerk.
32. Redford P. Dey, Windsor, Washington Township, Farmer.
33. James M. Mathews, Trenton, R. F. D. No. 1, Ewing Township, Blacksmith.
34. John Morgan, 44 W. Lafayette street, Trenton, Second Ward, Bar Clerk.

35. James Chamberlain, Hamilton Square, Hamilton Township, Real Estate.
36. Elwell S. Clugston, 35 Kent street, Trenton, Tenth Ward, Machinist.
37. Charles Hauer, 9 Hewitt street, Trenton, Eleventh Ward, Engineer.
38. Walter S. Burchell, 314 Rutherford avenue, Trenton, Thirteenth Ward, Clerk.
39. Joseph A. Nicholson, 39 Spring street, Trenton, Thirteenth Ward, Clerk.
40. Thomas D. Stelle, Yardville, Hamilton Township, Farmer.
41. Joseph F. Lenox, 912 Berkeley avenue, Trenton, Fourteenth Ward, Decorator.
42. Charles B. Hight, 510 W. Hanover street, Trenton, Thirteenth Ward, Carpenter.
43. James Kane, 526 S. Warren street, Trenton, Fourth Ward, Retired.
44. Walter C. A. Henney, 1138 Hamilton avenue, Trenton, Twelfth Ward, Bookkeeper.
45. Elmer E. Remsen, 126 Kent street, Trenton, Tenth Ward, Potter.
46. Charles J. Housel, 150 Perry street, Trenton, Seventh Ward, Manager.
47. Richard Lanning, Lawrenceville, Lawrence Township, Farmer.
48. Russell Hooper, Hamilton Square, Hamilton Township, Clerk.
49. Raymond Hutchinson, Trenton, R. F. D. No. 3, Hamilton Township, Clerk.
50. William F. Hilderbrandt, Pennington, Hopewell Township, Farmer.
51. Frank L. Reed, 52 Charles street, Trenton, Tenth Ward, Produce Dealer.
52. Charles Furman, 130 E. Front street, Trenton, First Ward, Liveryman.
53. Liscomb B. Titus, Hopewell, Hopewell Township, Farmer.
54. Harry H. Farr, 42 Wiggins street, Princeton,

Princeton Township, Merchant.

55. Charles H. Latourette, Charlton street, Princeton, Princeton Township, Magazine.

56. Josiah Hollies, 224 Beechwood avenue, Trenton, Fourteenth Ward, Merchant.

57. George W. Aller, Sr., 9 W. Front street, Trenton, Second Ward, Produce.

58. William W. Lukens, 165 Nassau street, Princeton, Princeton Township, Contractor.

59. Phillip Bennett, 62 Nassaue street, Princeton, Princeton Township, Printer.

60. Simeon Middleton 102 Jackson street, Trenton, Third Ward, Retired.

61. Reuben Farr, Snowden Lane, Princeton, Princeton Township, Farmer.

62. Charles H. Christopher, 13 Hampton street, Trenton, Twelfth Ward, Blacksmith.

63. Charles Lavine, 20 Greenwood avenue, Trenton, Third Ward, Merchant.

64. Samuel B. Wear, 624 Perry street, Trenton, Fifth Ward, Newsdealer.

65. William Wiley, Cranbury, R. F. D. No. 2, West Windsor Township, Machinist.

66. J. Baldwin Drake, Hopewell, Hopewell Township, Garage.

67. Thomas McCullough, 456 W. Hanover street, Trenton, Thirteenth Ward, Concrete Wkr.

68. Christopher H. Andreas, 549 Brunswick avenue, Trenton, Fifth Ward, Cafe.

69. Albert Wooley, 689 Center street, Trenton, Sixth Ward, Salesman.

70. George R. Cox, 127 Girard avenue, Trenton, Eighth Ward, Carpenter.

71. John W. Hendrickson, 441 W. Hanover street, Trenton, Thirteenth Ward, Canvasser.

72. William Adams, 435 Center street, Trenton, Fourth Ward, Wireworker.

73. David C. Johnson, 63 Carroll street, Trenton, First Ward, Superintendent.

74. Edward B. Skellinger, 851 Hamilton avenue, Trenton, Twelfth Ward, Retired.
75. Alexander L. Berrien, Alex street, Princeton, Princeton Township, Real Estate.
76. Edward Farley, 53 Spring street, Trenton, Thirteenth Ward, Bill Poster.
77. Chris. Stenger, 112 Washington street, Trenton, Tenth Ward, Potter.
78. John F. Hartman, 918 Chestnut avenue, Trenton, Eleventh Ward, Watchmaker.
79. George Fitzgeorge, 128 S. Stockton street, Trenton, First Ward, Druggist.
80. Harry Bratton, 918 Lamberton street, Trenton, Sixth Ward, Potter.
81. Clarence E. Stead, 168 Nassau street, Princeton, Princeton Township, Undertaker.
82. Benjamin L. Hartman, 2204 S. Broad street, Trenton, Hamilton Township, Fruit Dealer.
83. George Koenig, 509 S. Warren street, Trenton, Fourth Ward, Delicatessen.
84. Thomas Jordan, 628 Division street, Trenton, Eleventh Ward, Jeweler.
85. Edgar S. Crider, Yardville, Hamilton Township, Miller.
86. Lewis S. Stout, 637 Indiana avenue, Trenton, Eighth Ward, Rubberworker.
87. Thomas L. Davis, 215 Lafayette avenue, Trenton, Hamilton Township, Salesman.
88. Lawrence J. Sweeney, 723 Princeton avenue, Trenton, Fifth Ward, Confectioner.
89. William H. Holcomb, 19 Franklin street, Penniington, Hopewell Township, Laborer.
90. Fred Kemler, 317 S. Broad street, Trenton, Third Ward, Tailor.
91. Anthony Vanhise, 18 S. Warren street, Trenton, First Ward, Undertaker.
92. John H. Bahrenburg, 101 Greenwood avenue, Trenton, Ninth Ward, Ice Dealer.
93. Elwood Lawrence, Law Road, Princeton

Township, Carpenter.

94. John H. Neale, 841 Stuyvesant avenue, Trenton, Thirteenth Ward, Clerk.

95. Charles Sorter, Princeton, R. F. D. No. 3, Princeton, Farmer.

96. James F. Collis, Sr., Hamilton Square, Hamilton Township, Rubberworker.

97. Harry S. Walsh, Trenton, R. F. D. No. 1, Ewing Township, Stenographer.

98. Harry E. Crossey, 17 E. Lafayette street, Trenton, First Ward, Paperhanger.

99. John S. Mount, Dutch Neck, West Windsor, Township, Carpenter.

100. Joseph E. Hart, 30 Hart avenue, Trenton, Fifth Ward, Rubberworker.

I, Erwin E. Marshall, President Judge of the Court of Common Pleas of Mercer County (the Justice of the Supreme Court assigned to hold the Circuit Court in and for such County of Mercer being absent), do hereby certify that the foregoing is a true and correct list of the duly qualified persons constituting the panel of Petit Jurors drawn from the body of the County of Mercer to serve before such Justice of the Supreme Court as shall hold the Circuit Court in and for the County of Middlesex on the twenty-fourth day of May, nineteen hundred and fifteen, in the trial of an issue between the State of New Jersey, plaintiff, and Harry Patterson and others, defendants, which said list was drawn pursuant to an order made by Hon. Thomas W. Trenchard, Justice of the Supreme Court, and filed in the office of the Clerk of the County of Mercer on the fourteenth day of May, 1915, by the Sheriff of said County of Mercer in open court, and in my presence and in the presence of Daniel J. Bechtel, the other Jury Commissioner of said County of Mercer, on the fourteenth day of May, nineteen hun-

dred and fifteen, at two-thirty o'clock in the afternoon, pursuant to the direction of said order and of the statute in such case made and provided.

Witness my hand this fourteenth day of May, nineteen hundred and fifteen.

ERWIN E. MARSHALL,
Judge.

New Jersey, ss:

The State of New Jersey to our Sheriff of our County of Mercer, Greeting:

(Seal.) We command you that you cause to come before such Justice of our Supreme Court, as shall hold our Circuit Court, to be holden at New Brunswick, in and for the County of Middlesex, on the twenty-fourth day of May A. D., one thousand nine hundred and fifteen, one hundred good and lawful men of the body of your county, above the age of twenty-one years, and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are in no wise of kin to any of the parties below mentioned, said one hundred men to be selected in the same manner as the general panel of jurors of said County of Mercer is now selected, and to be such as are competent jurors for the said County of Mercer, to make a certain jury of the country, between the State and Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, defendants, on indictment for the murder of Alesandro Tessitore, because as well the said State as the said Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John

Smith, William McLaughlin, Tone Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, between whom the contention is, have put themselves upon the said jury, and in what manner you shall have executed this Writ, make and appear at New Brunswick, aforesaid, before our said Justice of our said Court, on the day aforesaid, and have you then and there the names of the jurors above mentioned, and this Writ.

Witness, William S. Gummere, Esq., Chief Justice of our said Supreme Court, at Trenton, this thirteenth day of May A. D., nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

JOHN W. WESCOTT, Attorney General,
Attorney for the State.

Filed, May 24th, 1915.

B. M. GANNON,
Clerk.

2055
(Endorsement)

NEW JERSEY SUPREME COURT

State of New Jersey

vs.

Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston.

Sur Indictment for Murder

Filed, June 1st, 1915.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT

State of New Jersey vs. Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston.	Sur Indictment for murder.

The above-mentioned indictment returned against defendants above mentioned in the Middlesex County Court of Oyer ad Terminer having been removed in to the New Jersey Supreme Court at the February Term, nineteen hundred and fifteen of said Court by Writ of Certiorari, the said Writ being returnable on the twenty-second day of April, nineteen hundred and fifteen, and a motion for a Foreign Jury for the trial of said indictment having been made in the Supreme Court by John W. Wescott, Attorney General, in behalf of the State, and the said motion having been granted by the Supreme Court and the said indictment having been retained in the Supreme Court to be carried down for trial of the issue

joined therein at the Middlesex County Circuit, before such Justice of the Supreme Court as shall hold such Circuit, and Monday, the twenty-fourth day of May, nineteen hundred and fifteen, having been fixed by order of the Supreme Court for the trial of said issue, subject to the right of the said Justice holding said Circuit to postpone said trial, which said Monday, the twenty-fourth day of May is prior to the next Circuit Court to be holden in the County of Middlesex after said Writ of Certiorari was, as aforesaid, returnable, the said defendants, Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, do, each and every of them, hereby consent and agree that the trial of said indictment be had on Monday, the twenty-fourth day of May, nineteen hundred and fifteen, and do hereby waive any and all objections that they, or any of them, might or could, at any time, have or make to the said indictment, being tried at the time last aforesaid.

And it appearing further that by the provisions of an act entitled "A Supplement to an act entitled 'An act concerning juries' (Revision), approved March twenty-seventh, one thousand eight hundred and seventy-four," approved May twenty-ninth, one thousand nine hundred and thirteen, that at least thirty days prior to the commencement of each term of the Circuit Court in their county the Commissioners of Juries are required to make a list, alphabetically arranged,

of persons liable to jury duty, and that, on a day and time to be fixed by the Justice of the Supreme Court, not more than fifteen days before the commencement of each term of the Circuit Court, the County Clerk of the County or his Deputy, shall, in open court, present to such Justice of the Supreme Court or, in his absence, to the presiding Judge of the Court of Common Pleas of such County, the Jury List for the term filed with such County Clerk, and that the Jury Commissioners shall, at the same time, draw the panel of jurors in the manner provided by said act.

And it appearing further that, pursuant to an Order of the Supreme Court entered in the above entitled matter on the eleventh day of May, nineteen hundred and fifteen, a venire has been issued out of the Supreme Court to the Sheriff of the County of Mercer commanding him to summon one hundred jurors from the body of the County of Mercer to serve at the trial of said cause above mentioned, in the Circuit holden in and for the County of Middlesex on said twenty-fourth day of May, nineteen hundred and fifteen, such venire commanding that such jurors shall be selected in the same manner as the general panel of jurors is now selected, and shall be such as are competent jurors for the said County of Mercer, and it appearing that sufficient time will not elapse between the entry of the Order above mentioned and the said twenty-fourth day of May to permit the said Jury Commissioners to prepare a list of persons competent to serve as jurors at least thirty days prior to the opening of the term of said Middlesex County Courts or prior to the said twenty-fourth day of May, if, in fact, the preparation of a special list for such panel is contemplated by the statutes or by said Order of said Court.

And it appearing further that, prior to the opening of the present term of the Circuit Courts of

the County of Mercer, a Petit Jury List of five hundred names was prepared by the Jury Commissioners of the County of Mercer, and posted and filed in accordance with the statute above mentioned from which list the general panel of jurors for service at the pending term of the County Courts of said County of Mercer was drawn in accordance with the statute.

And it appearing further that said list is now on file in the office of the Clerk of the County of Mercer and contains the names of four hundred and thirty-eight persons, who are competent jurors for the County of Mercer (the number of names on the list having been reduced by drawing therefrom the general panel of sixty names for service as Petit Jurors at the pending term of the Mercer County Courts, and by the death of two persons whose names appear on said list).

And it appearing further that sufficient time will not elapse between the date of the filing of the said Order of the Supreme Court and the said twenty-fourth day of May for the presentation of the list of jurors and for the drawing of the names from said list at least fifteen days prior to the opening of the pending term of the said Middlesex County Courts at which said indictment is to be tried, or at least fifteen days prior to the said twenty-fourth day of May, nineteen hundred and fifteen, and that the Honorable Thomas W. Trenchard, the Justice of the Supreme Court assigned to hold the Circuit in and for the County of Mercer, has, by Order, fixed Friday, the fourteenth day of May, nineteen hundred and fifteen, at the Court House, in the City of Trenton, County of Mercer and State of New Jersey, at two-thirty o'clock in the afternoon of said day, as the time and place when and where the said Clerk of the said County of Mercer shall attend with the list of Petit Jurors above mentioned, and as the time

and place when and where the said Jury Commissioners shall proceed to select said panel of one hundred men in the manner provided by law, the said defendants, Harry Patterson, John Gorden, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, do, each and every of them, hereby waive any and all objections that they, or either of them, might or could, at any time, have or make because or on account of the fact that the said panel of one hundred jurors was drawn from the list of Petit Jurors prepared by the Jury Commissioners prior to the pending term of the Mercer County Courts, and because or on account of the fact that the said panel of one hundred jurors was drawn from said list at a time less than fifteen days prior to the opening of the pending term of the Middlesex County Courts or prior to the said twenty-fourth day of May, or because of the fact that said panel of one hundred Petit Jurors was drawn from a list which contained, at the time it was made up by the said Jury Commissioners, at least thirty days prior to the opening day of the pending term of the Mercer County Courts, at least five hundred names, but which contained at the time of the drawing of said panel of one hundred Petit Jurors less than five hundred names as has been above stated.

And it appearing further that prior to the issuance of the Writ of Certiorari above mentioned, to wit, on the third day of April, nineteen hundred and fifteen, an Order of Severance was allowed by the Honorable James J. Bergen, Judge of the

Middlesex Oyer and Terminer, and by which Order it was provided that the following named defendants, to wit: James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John Smith, be tried separately and apart from the other persons jointly indicted with them for the murder of Alesandro Tessitore, which said Order of Severance was annexed to the return to the above mentioned writ, which is part of the record of said cause now in the Supreme Court. The said defendants, James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams and John Smith, and the said defendants, Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Edward Gillen, Michael Manning, William Erving, Henry Gilmour Alexander Brummer, Harry Terrill, Harry C. Tiler, Walter Bedell, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, do, each and every of them, hereby consent and agree that the said Order of Severance shall apply to the trial of the said indictment at the Middlesex Circuit on said twenty-fourth day of May, in the same manner and in all respects the same as though said Order of Severance had been made by the Supreme Court subsequent to the return of said Writ of Certiorari, and that said Order of Severance shall have the same force, effect and validity as though it were made by the Supreme Court subsequent to the return to said Writ of Certiorari.

And it appearing further that, prior to the issuance of the Writ of Certiorari above mentioned, to wit, on the eleventh day of February, nineteen hundred and fifteen, the said Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick,

Fred Mullen, Edward Gillen Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston appeared in the Court of Oyer and Terminer of the County of Middlesex and pleaded "not guilty" to the indictment above mentioned, as appears from the return to said Writ of Certiorari, the said defendants, Harry Patterson, John Gordon, Carl Smith, Thomas Murphy, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Edward Gillen, Michael Manning, Harry Tone, William Erving, Henry Gilmour, John O'Mara, Alexander Brummer, Harry Terrill, Harry C. Tiler, James Bavier, Walter Bedell, John C. Moran, John Smith, William McLaughlin, Tony Simone, Walter J. Batterson, John Mulvaney and Frederick Livingston, do, each and every of them, hereby consent and agree that the said pleas entered by them as aforesaid in the Court of Oyer and Terminer of the County of Middlesex, as shown by the return to said Writ, shall have to all intents and purposes the same effect as though the defendants had, each and every one of them, duly entered pleas of "not guilty" before the Supreme Court after the return of said Writ of Certiorari, and the said defendants do hereby, each and every of them, waive any and all objections that they, or any of them, might or could, at any time, have or make because or on account of the fact that the said defendants have not pleaded in the Supreme Court subsequent to the return of said Writ of Certiorari.

The above stipulation and agreements shall not be construed so as to bar the above mentioned defendants, or any of them, from reviewing the Order of the Supreme Court granting a Foreign

Jury for the trial of the case above mentioned, if such Order is reviewable, except the portion of said Order fixing the twenty-fourth day of May, nineteen hundred and fifteen, as the date for the trial of said issue, to which said last mentioned portion of said Order the said defendants, and each and every of them, hereby consent and agree as above set forth, nor shall the said stipulations above contained be construed so as to prevent the said defendants from reviewing the Order of Severance above referred to, if such Order is reviewable, but if such Order of Severance is reviewed, objection to it shall not be taken upon the ground that it was made by a Judge of the Oyer and Terminer rather than by the Supreme Court subsequent to the return of said Writ of Certiorari.

JOSEPH E. STRICKER,

Attorney for Defendants.

JOHN W. WESCOTT, Attorney General.

New Jersey Supreme Court

Middlesex County Circuit.

April Term, 1915.

STATE OF NEW JERSEY, vs. ROBERT J. WALLACE, JAMES D. WILLIAMS, FRANK RICK FRED MULLEN JOHN C. SMITH HARRY TONE JOHN O'MARA JAMES BAVIER JOHN C. MORAN WILLIAM McLAUGHLIN	On Indictment for Homicide.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before HON. JAMES J. BERGEN, Justice of the Supreme Court, and HON. PETER F. DALY, Common Pleas Judge, at the Court House in the City of New Brunswick, N. J., on the twenty-fourth day of May, A. D., 1915, at 10.00 a. m.

Appearances:

JOHN W. WESCOTT, Esq., Attorney General.

JOSIAH STRYKER, Esq.,

THEODORE BACKES, Esq.,

W. EDWIN FLORANCE, Esq., Prosecutor of the Pleas.

JOHN A. COAN, Esq., Assistant Prosecutor of Pleas.

Representing the State of New Jersey.

ROBERT H. McCARTER, Esq.,

JOSEPH E. STRICKER, Esq.,

Representing the Defendants.

MR. FLORANCE: I move the trial of the indictment of the State against James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin, James Williams, and John C. Smith, for the murder of Alesandro Tessitore.

THE COURT: Are the defendants in Court?

THE SHERIFF: Yes, they are, Your Honor.

THE COURT: Mr. Prosecutor, have someone call the list, and ask the attorney for the defendant to say whether they are all here. What have you to say, Mr. Stricker?

MR. STRICKER: They are here.

THE COURT: Let the sheriff return a panel.

MR. McCARTER: I make no objection to the offer to try both indictments together. There are two deaths here and two indictments, and the State, so far as I am aware, is quite willing that we should proceed to the trial on both indictments. The only embarrassment about it is, as I understand it from counsel, the fact that they are not prepared to prove the corpus delicti as to the one.

THE COURT: I do not think it would be wise to try these defendants for two different crimes. I think it is advisable to try one.

MR. McCARTER: Of course, the defendants are here in custody, and at very great expense to everybody in this matter, and we thought, and I

think the State is willing, if they prove the corpus delicti in time, to proceed that way. Of course, if they cannot do it, there is no harm done. My suggestion is that the witnesses be sworn and the jury empanelled in both case, and then if we find before we get through it is impracticable, it can be withdrawn.

THE COURT: I do not think we had better encumber the record. I do not think it would be wise.

MR. McCARTER: Before the jury is called we would like to have determined the question of the number of challenges, peremptory challenges, the defendants have in this case. Our insistment is that each defendant, there being ten to be tried, has five challenges:

THE COURT: What motion is before me now, that I can settle that? That can only arise when you may never require that question to be decided. There may be no objection.

MR. McCARTER: Your Honor can see it would make a very great difference in the treatment of the array. I think that it is only fair, if the Court's view is that the defendants only have collectively five challenges, that we know that in advance.

THE COURT: My difficulty is to know what I am to decide. What issue is there on the record? If after five have been challenged and you should challenge the sixth, then the question might arise. And I would be perfectly willing to settle the question.

MR. McCARTER: That is perfectly true, but here is a most serious case, and there certainly is a very interesting question as to whether or not the defendants are entitled to five challenges collectively, or individually. It would make a very great difference in the conduct of the defence, in the selection of this jury, and there ought to be

some way, it seems to me, practically, by which that question can be decided before the five are exhausted, and I do not believe there would be any objection to the Court's hearing argument upon that question, and determining in advance, and then the exceptions can be taken, if there be an exception, at the proper time. But Your Honor can see, I think, obviously, that it might make a very great difference, which way the ruling is, upon the defence's attitude in drawing this jury.

THE COURT: Well, I will hear argument. What is your position?

MR. McCARTER: Our position is very briefly this: Of course, this is now a foreign jury, and the statute has the provision, as Your Honor knows, that the defendant, when there be a foreign jury, shall have five challenges. The other section of the Criminal Procedure Act, which speaks of the challenges in the ordinary case, makes use of the expression, as Your Honor recalls, "the defendant or defendants." And under that language the Courts, as, of course, we all are aware, have held that if there be one defendant or a dozen defendants, that under that there is but one set of challenges for all, or for the one, if there only be one. And the third section, which is in regard to the matter, is where it says "every person shall have." It is not every person on the one side, neither is it the defendant or defendants, but it says "the defendant." And our thought is, and we urge, that the Legislature in that section intended to give to the defendant, if he be alone, or to the defendants, if there be more than one, in the event of a foreign jury being drawn, each the right to have the number of challenges that otherwise would apply. That otherwise one can see what a great difference there is in the case of a foreign jury, from the case of a local jury. And I think under the circumstanc-

es a liberal construction ought to be given to the act. Owing to circumstances over which nobody had any control, the Court, in its wisdom, saw fit to direct that a foreign jury be brought here. We are not quarrelling with that determination at all, but we say that that ought not to deprive the defendants of the number of challenges they would have had under ordinary circumstances, unless it was so plain that you could not conclude otherwise. If there had been a local jury here, the defendants would have had either twenty, or perhaps twenty times five challenges; probably the latter. Here it would seem to be a most rigorous and narrow construction, and one that does not appeal to the equity residing behind this, that the defendants, simply because they are confronted with a foreign jury, should have their number of challenges so materially reduced from what they would have had if it were a local jury. The language does not require it, the language is different from the other cases, and it seems to me that the proper construction, because it is a case of construction, it is a novel question, never knew it to be raised before, the proper construction of the statute is, not being per se, as it says in certain cases, not being defendant or defendants in other cases, but simply says "the defendant". That must mean, under all the circumstances, each defendant, and we ask for that liberal and fair construction of that act.

THE COURT: Mr. McCarter, where do you find, if you are going to construe these two sections strictly, any right to challenge at all, when there is a foreign jury in a homicide case? The first section, number 80, which provides for twenty challenges to the defendant and ten to the State in homicide and other cases named, says that this act shall not apply to a case of a struck or foreign jury. If I stopped there, there would

not be any challenges. Number 81 says that upon the trial of an indictment where twenty peremptory challenges are not allowed, then there shall be ten challenges; and then it proceeds to say, in this same section, and without assigning any cause, twelve of the jurors returned for the trial of such indictment—that is what the State can challenge—and upon the trial of any indictment for which a struck or foreign jury is returned, five peremptory challenges each shall be allowed. That seems to apply to cases where there are only ten challenges. But I do not propose to put that construction upon the Act. I have looked at the matter and I have come to the conclusion that where there is more than one defendant, they are only entitled to challenge, collectively. The Supreme Court has held that, that they are entitled to five challenges collectively. That we must agree to. And the same sentence provides in the case of a foreign jury there shall be five challenges. That was held in the recent case, what was it, the Requin case, and it was afterward approved in an opinion written by now Mr. Justice Pitney of the Supreme Court, citing, and with approval, that construction.

So when the occasion arises I shall rule that the defendants are entitled to but five challenges collectively, and at that time you may take an exception.

MR. McCARTER: Yes, sir.

THE COURT: The sheriff may return a panel in this case.

ALBERT IMHOFF, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. FLORANCE: No challenge.

MR. STRICKER: To the favor.

THE COURT: What is the ground?

MR. STRICKER: The State does not challenge.

THE COURT: Do you challenge?

MR. STRICKER: No, sir.

THE COURT: Let the juror be sworn.

MR. STRICKER: We ask to have him sworn to the favor.

THE COURT: Do you challenge the juror?

MR. STRICKER: No, sir.

THE COURT: What ground would he be sworn on?

MR. STRICKER: For the purpose of eliciting information to——

THE COURT: If you want to challenge this juror, state the ground of challenge. If it is a good one, I will entertain it. If it is a bad one, I will overrule it. You cannot call a juror and challenge the juror without giving some reason. It might be some reason that did not disqualify him.

MR. STRICKER: We desire to get information in order to lay a foundation for the challenge.

THE COURT: That is overruled. Have you any other ground?

MR. STRICKER: Does Your Honor draw any distinction between this jury and any other jury?

THE COURT: I do not have to rule on that. You have challenged, and stated your ground, which I overrule. Now, if you have any other ground, state it, and I will pass on it.

MR. STRICKER: We desire to have this juror sworn for the purpose of eliciting information from him ——

THE COURT: I have overruled that.

MR. STRICKER: I would like to get my objection on the record.

THE COURT: It has been put on the record.

Now I overrule it. Do you take an exception to that?

MR. STRICKER: We certainly do.

THE COURT: You are entitled to an exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

THE COURT: Proceed. Is there a peremptory challenge now or not?

MR. STRICKER: No, sir .

THE COURT: Let the juror be sworn.

MR. McCarter: May we ask the gentleman a few questions before he is sworn?

THE COURT: No. If you will state the ground, if it is a good ground of challenge I will try the question, but I must know the ground of challenge.

MR. McCARTER: We challenge because he is interested in the case and has made up his mind, and ask leave to examine him to see if our challenge is good.

THE COURT: State that again.

MR. McCARTER: I understand that the practice in these cases is this:——

THE COURT: I do not want that. I only want to know what your ground of challenge is. If I make a mistake you have your remedy.

MR. McCARTER: There is, of course, in this case, as everyone knows who knows anything about it, involved one of the questions of the times ——

THE COURT: I want you to state your ground of challenge, if you have any other ground. You have stated one ground, or Mr. Stricker has, which I have overruled. Have you any other ground?

MR. McCARTER: Yes, sir. We understand, our information is that this gentleman is inter-

ested in trade unions, and we feel that that entitles us to find out his attitude upon that question, because we feel that that question is involved in the trial of this case, and for that reason we challenge him, and ask the right to examine him.

THE COURT: I overrule the challenge on that ground.

MR. McCARTER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

THE COURT: Let the juror be sworn.

Juror sworn.

LEWIS P. FUHRMAN, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the jurors. Does the defence challenge?

MR. STRICKER: We challenge to the favor.

THE COURT: What ground?

MR. STRICKER: On the ground that this talesman is a person likely to be interested in the labor union to an extent which might bias him from rendering a verdict according to the evidence in this case.

THE COURT: Is that all?

MR. STRICKER: That is all.

THE COURT: Overrule it. You may take an exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: The State has no objection to this juror.

THE COURT: Let the juror be sworn.

Juror sworn.

ALBERT WOOLEY, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: The State has no objection.

THE CLERK: Does the defence challenge?

MR. STRICKER: Challenge to the favor, and we ask this juror be sworn for the purpose of eliciting information as to whether or not he possesses any bias which would prevent him from rendering an impartial verdict according to the evidence.

THE COURT: The challenge is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

Juror sworn.

EDGAR S. CRIDER, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor.

THE COURT: For the same reason?

MR. STRICKER: Same reason.

THE COURT: Challenge overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: The State interposes at this time its first peremptory challenge.

FRED KEMLER, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

THE JUROR: I am close to sixty-six.

THE COURT: Any objection to excusing this juror?

MR. WESCOTT: Is your health good?

THE JUROR: Not very good, no.

MR. WESCOTT: We have no objection to the juror, but, of course, if his health is in a precarious condition it might imperil the trial. We are willing to excuse him on that ground, if the other side consent to it.

THE COURT: What does the defence say?

MR. STRICKER: All right.

THE COURT: You may be excused.

HARRY BENTLEY, called.

THE CLERK: Juror: look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, for the same reasons. And I might add that this information which we seek is for the purpose of laying grounds for peremptory challenge.

THE COURT: It is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: We have no objections.

MR. STRICKER: One moment. We challenge this juror.

WILLIAM H. HOLCOMB, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge.

MR. WESCOTT: Acceptable to the State.

MR. STRICKER: Challenge to the favor for the same reasons.

THE COURT: Overruled. Let the juror be sworn.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

Juror sworn.

ALBERT H. BRADSHAW, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, and my objection will have to be changed a little. I desire to elicit information from the gentleman as to whether or not his commercial associations are such as would prevent him from rendering a verdict in this case according to the evidence.

THE COURT: I overrule that challenge.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: No, sir.

THE COURT: Let the juror be sworn.

Juror sworn.

JOHN V. GREENE, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: No challenge.

MR. STRICKER: To the favor. Same grounds.

THE COURT: Overruled. Swear the juror.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

Juror sworn.

CHRISTOPHER ANDREAS, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: Challenge this juror.

JOHN F. HARTMAN, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: No challenge.

MR. STRICKER: To the favor, same grounds.

THE COURT: That is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J .BERGEN,
Judge.

THE COURT: Let the juror be sworn.

Juror sworn.

CHARLES BLAUTH, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, on the same grounds.

THE COURT: That is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: How old are you?
THE JUROR: Fifty-five.
MR. WESCOTT: No objections to him.
THE COURT: Let the juror be sworn.

Juror sworn.

JOSEPH G. DRAKE, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: Yes, sir.

SIMEON MIDDLETON, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, on the same grounds.

THE COURT: Challenge overruled.

MR. WESCOTT: Challenged by the State.

WILLIAM WILEY, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: How old are you?

THE JUROR: I am fifty. Before I go any further, I have got a very sick brother in Mercer Hospital, and it would be a very great convenience if you would excuse me.

THE COURT: If you have anything of that kind to say, address it to the Court. Does the State challenge?

MR. WESCOTT: No, we do not, but we would like to accommodate the juror, if the other side is willing.

THE COURT: We will settle that question afterward. Do you challenge.

MR. WESCOTT: No.

THE COURT: How about the defence? This juror asks to be excused. Do you agree to it?

MR. STRICKER: We agree to it.

THE COURT: Does the State agree to it?

MR. WESCOTT: We agree to it.

THE COURT: You are excused.

ALEXANDER L. BERRIEN, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, same grounds.

THE COURT: That is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

THE COURT: Does the State challenge?

MR. WESCOTT: Challenged by the State.

JOSEPH A. NICHELSON, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: Acceptable to the State.

MR. STRICKER: Challenge to the favor, same grounds.

THE COURT: That is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

THE COURT: Let the juror be sworn.

Juror sworn.

GEORGE KOENIG, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, on the same grounds.

THE COURT: It is overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: Acceptable to the State.

Juror sworn.

THOMAS B. STEELE, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the State challenge?

MR. WESCOTT: No challenge.

MR. STRICKER: To the favor, same grounds.

THE COURT: Overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

THE COURT: Let the juror be sworn.

Juror sworn.

ELWELL S. CLUGSTON, called.

THE CLERK: Juror, look upon the prisoners. Prisoners, look upon the juror. Does the defence challenge?

MR. STRICKER: To the favor, same grounds.

THE COURT: Overruled.

MR. STRICKER: Prays exception.

Exception allowed. Sealed accordingly.

J. J. BERGEN,
Judge.

MR. WESCOTT: Acceptable to the State.

Juror sworn.

Jury complete.

Mr. Florance opens the case for the State.

SAMUEL J. MASON, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Mason, you are a civil engineer?

A. Yes, sir.

Q. And you have been so for how long?

A. Fifteen years.

THE COURT: Is there any dispute about this map? Does it have to be proved?

MR. STRICKER: No, sir.

MR. McCARTER: As far as I can see, the map is all right.

THE COURT: The defence are willing to admit this map. You might just as well save that time.

MR. COAN: Very well, sir, we offer the map.

MR. STRICKER: We reserve the right to supplement that map with another one.

THE COURT: That has nothing to do with another map; the map will be admitted.

(Map entered in evidence and marked Exhibit P-1.)

Q. Now, Mr. Mason, will you explain that map to the jury?

A. The map shows the existing railroad tracks, railroad stations, fence lines, roadways, swamps and filled ground at the Williams & Clark plant at Roosevelt, New Jersey. The scale is 20 feet to 1 inch. And the top of the map is the north point. The various points are noted on the map with printing as you will see. The railroad station is marked "R. R. Station" and the office of the Williams & Clark plant is noted as "Office." The

fence is shown by marking of fence, and the various railroad tracks are shown by two parallel lines drawn to a scale. Any further description?

Q. Where is the main line of the Sound Shore Railroad?

A. The main line occupies the position in the center of the map running from the top of the map to the bottom, marked at one end "To Elizabeth" with an arrow, and the other end to "Carteret Station," with an arrow.

Q. What is the little building apparently that is noted on the side of that map under the railroad station?

A. That is a little house to store a hand car, a construction car of the railroad.

Q. Will you state how the filled ground and swamp land is indicated, Mr. Mason?

A. The filled ground is shown in bluish coloring, and swamp ground is shown by green.

Q. When was the survey made, Mr. Mason?

A. About March first.

Q. The survey was made?

A. Yes, sir. The map was drawn March 2nd, 1915.

Q. And the scale you say is one inch to twenty feet?

A. Yes, sir.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Mr. Mason, you have not undertaken to show all the buildings of the Williams & Clark plant on that map, have you?

A. No, sir, I have not.

Q. Could you tell us how far the Liebig Plant is located from this particular site?

A. About 4,000 feet southerly.

MR. STRICKER: That is all.

RE-DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Mason, what is the red object upon the center of the map and somewhat to the right?

A. That is a building inside of the fence line of the Williams & Clark plant.

Q. One of the Williams & Clark buildings?

A. Yes, sir. It is one of the buildings I noted while making this map.

MR. COAN: I think that is all.

By the COURT:

Q. Is the railroad station marked on the map?

A. Yes, sir. It is.

Q. Point it out.

A. (Witness indicates.)

Q. That is the railroad station?

A. Yes, sir.

By MR. WESCOTT:

Q. How large is that station?

A. It is about 16 by 24 feet.

Q. One or two stories?

A. One story.

Q. Sort of an open shed?

A. Open shed in front.

By MR. STRICKER:

Q. Mr. Mason, what is the upper building there that you have located there right above Williams & Clark?

A. That is a building inside of the fence line of the Williams & Clark plant.

Q. What kind of a building?

A. A factory building. I think it is a bag—

Q. Why did you note that building in particular?

A. That building was taken during the survey.

Q. Why weren't the other buildings taken during the survey?

A. Buildings were not asked to be shown on this map outside of the office building.

Q. That being the case, why did you take that building?

A. In making a map of this sort all features that can be shown are usually taken that way when the—

Q. What particular significance has that building in exclusion to all other buildings on that map?

A. It has none except to indicate that there are buildings inside of the fence.

Q. The fact is that most of the land of the Williams & Clark plant at that point is covered with buildings?

A. That is true.

MR. STRICKER: That is all we have.

By MR. WESCOTT:

Q. The building that you have indicated there as "Office" is that a one story building or how?

A. I think it is a two story building.

Q. Do you remember whether from that building going towards the railroad, there is any structure of any sort?

A. There is none between the office and the railroad.

Q. Platform?

A. There is nothing inside of the fence line.

Q. Outside of the fence line?

A. Outside of the fence line, there is a walk and steps leading down from the office.

Q. How far is the fence line from the office in feet?

A. In a westerly direction?

Q. Yes.

A. 165 feet about.

Q. And how many feet from the fence line to the station, or to the railroad track where the station is?

A. 300 feet.

MR. WESCOTT: That is all.

HARRY RANDOLPH, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. You are a photographer, Mr. Randolph?

A. Yes, sir.

Q. In the City of New Brunswick?

A. In the City of New Brunswick.

Q. How long have you been engaged in that business?

A. About sixteen years.

Q. At the request of Prosecutor Florance of this County, did you make some pictures of the vicinity of the Williams & Clark plant at Roosevelt?

A. I did.

Q. And when were those pictures made?

A. They were made January 20th, 1915.

MR. COAN: The defence offers to admit the pictures without further proof.

THE COURT: Have them marked.

CROSS EXAMINATION:

By MR. STRICKER:

Q. You say they were made on the 20th, the morning after?

A. On the 20th.

MR. COAN: There are eleven of them.

THE COURT: Don't they speak for themselves?

MR. COAN: I want the photographer to show where they were taken from.

THE COURT: All right.

MR. COAN: I think it will result in a clear understanding for the jury.

THE COURT: Do you think they would remember it?

MR. COAN: I hope so.

MR. WESCOTT: He can designate the buildings and where he put his machine, because the jury do not know anything about this plot of land there, and these buildings, and they ought to have some clear conception of it, it seems to me.

Q. I show you photograph marked Exhibit P-2, and ask you where that photograph was taken from, where the camera was located at the time? Come down to the map, if you desire.

A. That photo was taken down near Carteret looking up the track, and bringing in the main buildings and the freight train. Taken away down here looking right up the track.

Q. This freight train that you speak of there, where was that freight train located?

A. That freight train was located away above the Williams plant.

Q. On what track, do you know?

A. On the factory track.

Q. Now, looking at Exhibit P-3, where was the camera located when that picture was taken?

A. The camera was in the meadows, about opposite the factory, about off here (indicating on map.)

A. Facing in what direction?

A. Facing the factory to the east.

Q. Showing what?

A. Showing the factory, main building, and the office building. Taken about off in here (indicating on map.)

Q. Showing you Exhibit P-4, I ask you where the camera was located when that picture was taken?

A. That picture was taken right about in the roadway, beyond the roadway here at the track showing the roadway and the fence, so it would miss the railroad.

Q. What buildings are exhibited in that picture?

A. Williams & Clark plant.

Q. What particular buildings of the plant?

A. Office building.

MR. McCARTER: You had better look at that again. I think you are wrong about that.

A. No. That is the office building. This is the main office building here.

Q. And Exhibit P-5, Mr. Randolph, where was your camera located when that picture was taken?

A. Well, that was a little nearer view, right about off in here, showing the roadway and the water here. This is the siding track.

Q. This water that is shown there where was that located? Show on the map where that water was located?

A. About off here in the roadway.

THE COURT: Mr. Coan, how is it important to take up our time with this. The defence admit these photographs in evidence as correctly repre-

senting what they purport to represent. Now, what difference does it matter where the camera stood as long as you have the picture? I do not want to interfere with your case, but it is taking a lot of time it seems to me on a non-essential.

MR. COAN: I do not want to waste any time. I thought it would be a help to the jury to know where they were taken from.

THE COURT: This witness said, as I understood him, they represent the locality they purport to represent. The defence says they are satisfied with that. What difference does it make where the camera was located? You are going to take up a half an hour proving where the camera was located, on 12 different pictures, and to which there is no dispute.

MR. COAN: Very well, I will let the pictures go as they are.

THE COURT: The pictures are admitted in evidence.

(Photographs entered in evidence and marked Exhibits P-6 to P-12, inclusive.)

EDGAR CARROLL, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Doctor, you are the County Physician of the County of Middlesex?

A. Yes, sir.

Q. And you were such in January last?

A. Yes, sir.

Q. State whether or not at the request of the prosecutor you made an autopsy on the remains of Alesandro Tessitore?

A. I did.

Q. Where was that autopsy made?

A. Elizabeth, at Mr. Martin's undertaking rooms.

Q. And when was it made?

A. January 20th.

Q. State what you did first, Doctor?

A. Well, we inspected the body first. It was the body of a middle-aged man, of medium height, good muscular development, and there appeared on the surface four gunshot wounds, one of the right leg, the ball entered about four inches above the right knee, and emerged about an inch and a half higher, and an inch and a half further back; one of the right leg, the ball entered on the outer side about six inches below the knee, and emerged at the middle of the leg in the calf of the leg; there was one of the left thigh, the ball entered about three inches above the left knee on the outer side, and emerged about an inch lower and three inches further back.

MR. McCARTER: I do not hear you, doctor. Won't you speak up a little louder.

A. Yes. The fourth ball entered the back about an inch below the twelfth rib, and two inches to the left of the middle line, and on opening the body, it was found to have wounded the left kidney, the spleen, the left lobe of the liver, and the stomach, and lodged under the skin over the head of the stomach, or epigastrium. That was the ball that caused the fatal result. The others were flesh wounds and were not serious.

Q. Doctor, what was the character of the first three wounds that you mentioned?

A. Flesh wounds. Superficial flesh wounds.

Q. Not injurious?

A. Not dangerous at all.

Q. What have you to say as to the fourth wound you have described?

A. I think it was necessarily fatal.

Q. And what have you to say as to what was the cause of death of Alesandro Tessitore?

A. Shock and hemorrhage.

Q. Resulting from what?

A. From the gun shot wound of the back.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Were you assisted by anybody in this examination, doctor?

A. Dr. Siphian was present.

Q. And when did you make that examination?

A. At Mr. Martin's undertaking room in Elizabeth.

Q. And was the bullet or ball or whatever it was—

A. Sir?

Q. Was the bullet recovered?

A. There was none in the body when I made the autopsy.

Q. The gun shot wound which you have described, the fourth one, which entered the left kidney?

A. Yes.

Q. Directing your attention to that, was the bullet which caused the injury recovered?

A. It was removed before I saw the body.

Q. You found none yourself?

A. No, sir.

Q. What day did you make this examination?

A. On the 20th of January.

By THE COURT:

Q. Last?

A. Last, yes, sir.

By MR. STRICKER:

Q. Did you know the deceased in his life time?

A. No, sir.

Q. Then what you are doing now is simply describing a person whom you found at the undertaker's shop?

A. Yes, sir.
Q. On the date that you have stated?
A. Yes, sir.
MR. STRICKER: That is all, doctor.

JAMES E. ROACH, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Doctor, you are connected with the staff of the Alexian Brothers Hospital at Elizabeth?

A. Yes, sir.

Q. State whether or not you had a patient, Alesandro Tessitore, there?

A. Yes, sir, we did.

Q. From where did he come?

A. He come from Carteret.

Q. When?

A. On the 19th of January.

Q. Were there others came at the same time?

A. Surely. Yes.

Q. How do you distinguish Tessitore from the others, doctor?

A. Well, I remember him distinctly. It was one of the worst cases. His case was one of the worst we had that morning.

Q. Well, who attended him?

A. Why, I attended him. I did the emergency work. I looked after him when he entered the hospital, but he was operated on afterwards by two other physicians from that town, Dr. Funk and Dr. Lamy.

Q. Did you see him after that, doctor?

A. Yes, sir.

Q. Where?

Q. At what time did you see him?

A. Why I saw him all that afternoon, and I saw him while he was operated on, I gave him the

anaesthetic, and I saw him taken from the operating room.

Q. Do you know what became of him?

A. Why, he died.

Q. When?

A. In the operating room.

Q. In the operating room?

A. Yes.

Q. Were you present at the time?

A. Yes, sir.

Q. Did you know where the body was taken to?

A. The body from the operating room was taken to Martin's undertaking establishment.

Q. In Elizabeth?

A. Elizabeth.

Q. What was the cause of the death, doctor?

A. Well, am I to answer this question?

THE COURT: Yes.

A. Well, in my opinion the cause of death was from shock and hemorrhage, internal bleeding.

Q. Resulting from what?

A. From the wounds he had received internally.

Q. What wounds had he received?

A. Well, from my observation, his spleen was partly decapulated, his kidney was perforated, left lobe of the liver was punctured, and the stomach was also perforated.

Q. Can you identify the wounds that caused those injuries?

A. Sir?

Q. Can you identify which particular wound caused this injury?

A. Well, the wound that caused that injury was the ball that entered under the 12th rib, on the left side, about an inch from the spinal column.

Q. You did not know the man before, doctor?

A. No, sir.

Q. Doctor, I show you an instrument and ask you if this is your signature?

A. Yes, sir.

Q. Do you remember the circumstances under which the instrument was signed?

A. Well, I have signed so many things I can't just say now, no; at a glance like that I couldn't tell.

Q. Do you know Mr. Robert Eaton, of Elizabeth?

A. Yes, sir.

Q. Do you remember Mr. Eaton being present?

A. Yes, sir.

Q. Do you remember what were the circumstances when he was present?

A. That was at the ante mortem statement.

MR. STRICKER: I object. I move that be stricken out.

THE COURT: What?

MR. STRICKER: It is for the Court to say what kind of a statement this is.

THE COURT: Well, that is descriptive merely. Now, tell us what took place before that statement was made, doctor?

A. Well, the man's condition was gone over, and I told the man that it was impossible for him to live.

Q. Speak louder?

A. I informed the patient that it was impossible for him to live, and the interpreter was there, and the prosecutor of Union County, and a stenographer, I believe, and an interpreter.

Q. Who was the interpreter?

A. The interpreter's name was Buckley.

Q. I presume that you talked to Mr. Buckley and he to the—

MR. STRICKER: I object.

Q. Did you speak to the patient himself?

A. Yes, sir.

Q. Did he understand English?

A. He understood a little. Not very much.

Q. In what language did you speak to him?

A. English.

Q. State when this paper that I have here was written?

A. That was on the 19th.

Q. Yes, but in reference to the time that you told the patient that he could not recover?

MR. STRICKER: I object on the ground that the witness has stated that the witness could speak but very little English, and whatever was conveyed to the deceased was through an interpreter.

THE COURT: I will admit the question.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

By THE COURT:

Q. Do you understand the question?

A. No, sir.

By MR. COAN:

Q. You said that you told the patient that he could not recover?

A. Yes, sir.

Q. Now, with reference to the time that you told the patient that, when was this statement written?

A. That was written immediately — about three-quarters of an hour afterwards.

Q. Was there anything said to the patient just at the time this was written?

MR. STRICKER: I object to this on the ground that—

THE COURT: I think you had better not lead the witness. You might ask him what, if anything, was said.

MR. STRICKER: But I think it ought to clearly appear first as to what language that was spoken in.

THE COURT: Well, he has testified that he understood some English. That is as far as you can go now.

MR. STRICKER: He said very little.

THE COURT: You, on cross examination, can prove, or have this witness admit that he did not understand a word of it and then, of course, it would have no weight. But I cannot try all these questions at once.

MR. STRICKER: I understood him—

THE COURT: I have overruled your objection.

Mr. Stricker prays exception.

THE COURT: Note exception; proceed.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. COAN: Did I understand your Honor to overrule that question?

THE COURT: No, I overruled the objection.

Q. (Repeated by stenographer.)

THE COURT: Answer yes or no.

A. Yes.

Q. What was it?

A. The interpreter was there and then the in-

terpreter—this man got weaker, and he finally got so that he could not understand what we were saying to him, what I was saying to him in English, at all. Then the interpreter, Mr. Buckley, spoke to him. What he said in Italian I don't remember.

Q. And after this statement had been prepared, state whether or not it was read over to the patient?

A. Yes, sir, it was.

Q. By whom?

A. Read over by Mr. Buckley.

Q. State whether or not it was then signed?

A. It was signed.

Q. And signed by you and the other witnesses?

A. Yes, sir.

Q. Now, doctor, there was one question I omitted. This gun shot wound that entered below the 12th rib, where did that enter, in the front or in the back?

A. In the back.

Q. At what point in the back? Can you illustrate to the jury? Stand up and illustrate to the jury?

A. Why, it entered below the 12th rib, in the lumbar region, about an inch from the spinal column.

Q. Will you turn around so the jury may see where your hand it?

A. Right about there (indicating).

MR. COAN: Cross examination.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Doctor, what time of the 19th did this man, this patient, reach the hospital?

A. I couldn't say positively as to the time. I was very busy before and we went out in the ambulance in a hurry, and I didn't have any idea of the time.

Q. What time was it, if you recall, when you first observed his wound?

A. I think it was about eleven o'clock.

Q. What time was the operation?

A. The operation was performed in the afternoon, I think about four.

Q. Were the doctors sent for to perform this operation?

A. Yes, sir.

Q. What was the character of this operation?

A. Well, it was an exploratory operation at first, to stop the bleeding, the internal hemorrhage. And then they discovered the kidney was perforated, and what they did I don't know, because I was giving the anaesthetic.

Q. Well, was it purely exploratory?

A. I believe it was at first.

Q. What?

A. I believe it was. I don't know the character of the operation. I was giving the anaesthetic and I didn't watch the place at all.

Q. Was the operation performed at your suggestion?

A. No, sir.

Q. At whose suggestion?

A. Dr. Lamy's suggestion.

Q. What time did Dr. Lamy suggest the operation?

A. I think about half past three in the afternoon.

Q. At that time you did not know whether the man was fatally hurt or not, did you?

A. Yes, sir.

Q. At the time before you commenced the operation?

A. Yes, sir.

Q. What?

A. We could tell that he was a very—

Q. Will you answer the question. Do you now tell this jury that before you commenced that operation you knew he was fatally hurt?

A. Yes, sir.

Q. What did you have the operation for?

A. To stop the internal hemorrhage.

Q. You cut him open?

A. To stop the bleeding.

Q. You cut him open?

A. I didn't cut him open.

Q. Well, he was cut open in your presence?

A. Yes, sir.

Q. And he died of shock on the table, did he?

A. No, sir.

Q. What?

A. I don't know what he died from. I didn't pay any attention to the operation at all. I give the anaesthetic and when I give an anaesthetic I never watch the steps of an operation.

Q. Did he die on the table?

A. Yes, sir.

Q. While the operation was in progress?

A No, sir. The operation was finished.

Q How long had it been finished?

A. Oh, about eighteen to twenty minutes.

Q. How many doctors were there?

A. Two.

Q. Besides yourself?

A. Yes, sir.

Q. What time was this operation, about three o'clock?

A. About four o'clock.

Q. Four o'clock?

A. Yes, sir.

Q. How long did it last?

A. It lasted about, I think about an hour and fifteen minutes.

Q. He was under the ether all that time?

A. Yes, sir.

Q. Did he recover from the ether?

A. Yes.

Q. Became conscious?

A. No, sir.

Q. So that he never regained consciousness after you administered the ether?

A. No, sir.

Q. What time of day did you take this statement, which you have been talking about?

A. That was in the morning, about, I think it was about quarter of 12. Some time around there.

Q. Then, within less than an hour from the time that he arrived, you took this statement?

A. Yes, sir.

Q. I understand that before you got through with it, he became so weak that you were satisfied that he could not even understand you?

A. Yes, sir.

Q. Where was he between about 12 o'clock noon and three o'clock or four o'clock in the afternoon when the operation was performed?

A. He was in bed all that time.

Q. Where was the doctor who performed the

operation? He was sent for, for the purpose of performing it, was he?

A. Yes, sir.

Q. Where did he come from, Elizabeth?

A. Yes, sir.

Q. Won't you explain to this jury, if you were satisfied that this man was fatally injured, and that his wound was fatal, and had told him so, why did you put him on the operating table and operate there an hour under ether?

A. I didn't have anything at all to do with that.

Q. What?

A. I didn't have anything at all to do with that. He wasn't operated on on my suggestion at all.

Q. What?

A. He was not operated on at my suggestion at all.

Q. Well, you sent for the operating surgeon, didn't you?

A. Yes, sir.

Q. What did you send for him for?

A. Because to get his advice and opinion. He was on service, what we call on service. He is the man that had charge of all the surgical work for that two months, and he had charge of the operation. I did not. I simply notified him that the patient was there.

Q. Where was the other one? He was notified too?

A. Yes, sir.

Q. So two gentleman were notified to come down to the hospital?

A. The other surgeon was notified by the surgeon who was notified first.

Q. Which one was notified first?

A. Dr. Lamy.

Q. And Lamy notified the other man?

A. Yes, sir.

Q. Are they here in court?

A. Not that I know of.

Q. Well, who assumed the responsibility of operating, if you didn't?

A. Dr. Lamy.

Q. Dr. Lamy did?

A. Yes, sir.

Q. Now, this man had been in such a weakened condition, that at noon you saw he could not understand you, and yet at three o'clock, doctor, or at four o'clock, Dr. Lamy suggested putting him under the knife?

A. Yes, sir.

Q. What was the character of the opening that was made?

A. I didn't notice it?

A. I didn't notice it.

A. Yes, sir.

Q. You were right there, weren't you?

A. Yes, sir. I was at the head of the table.

Q. Well, you were not etherized?

A. No, sir.

Q. You stood right at the man's head with a sponge over his mouth giving him ether?

A. Yes, sir.

Q. And you could not tell us what kind of an incision was made?

A. I couldn't positively say, no, sir.

Q. How do you know the location of all these wounds, then?

A. I examined him before he come in, when he was in the emergency room, in the back.

Q. You gave us testimony as to the kidney be-

ing perforated. You could not see that on the outside, could you?

A. No, that was afterwards.

Q. When?

A. The abdomen was all covered up with sheets. I couldn't see. And I had a sheet over me. I couldn't see.

Q. When did you see that the kidney was perforated?

A. After.

Q. After the death?

A. Yes, sir.

Q. At the autopsy?

A. No, sir.

Q. Well, then you investigated between the time of the death and the time of the autopsy, did you?

A. Yes, sir.

Q. Did you explore the body?

A. No, sir.

Q. Were you there when the bullet was taken out?

A. Yes, sir.

Q. Who took the bullet out?

A. One of the doctors. Dr. Lamy I believe removed the bullet.

Q. Who advised you that you were justified in trifling with that body after its death, before the county physician arrived?

A. I was simply standing there.

Q. But you had your eyes open?

A. I didn't touch the body.

Q. Now, who do you say was present in the room when this so-called state that has been produced here was taken?

A. Mr. Buckley.

Q. He is the interpreter?

A. Interpreter.

Q. Italian interpreter?

A. Italian interpreter, yes, sir. And Mr. Eaton, I believe he is a clerk of the court.

Q. Yes.

A. And I think the Prosecutor was there, of Union County.

Q. Mr. Florance?

A. No, sir, of Union County. And that is all I remember.

Q. There were four of you there?

A. Yes, sir.

Q. Besides the deceased?

A. Yes, sir.

Q. He was in bed?

A. The deceased was in bed, yes, sir.

Q. Did you converse with the deceased yourself?

A. Yes, sir.

Q. While he was there?

A. Yes, sir.

Q. Tell us so far as you can recollect what you said to him and what the man said to you?

A. I told him that he was in a very bad condition, very poor condition, and that he would die. Then he said, Well, all right. Then he was asked to make an ante mortem—

Q. No. What did you say to him first?

A. I told him that he was in a very bad condition, very poor condition.

Q. Is that what you said?

A. Yes, sir.

Q. You are in a very bad condition?

A. Very poor condition.

Q. Very poor condition?

A. Yes, sir.

Q. Well—

A. I asked him if he had anything to say, and would like to make a statement, and he was willing to make a statement.

Q. What?

A. He was willing to make a statement.

Q. He said he was willing to make a statement?

A. Yes, sir.

Q. Did he nod his head?

A. He said, Yes, all right.

Q. "Yes, all right?"

A. Yes, sir.

Q. Then what next occurred?

A. Then Mr. Eaton, through the interpreter, took the man's statement.

Q. The man said something in Italian?

A. Yes, sir.

Q. And the interpreter undertook to interpret, and Mr. Eaton took down in English what this interpreter said, is that right?

A. Yes, sir.

Q. You don't understand Italian?

A. No, sir.

Q. And after this paper was prepared in that way you signed it as a witness?

A. Yes, sir.

Q. Did you see the deceased sign it?

A. Yes, sir.

Q. Did he raise up in bed to sign it?

A. Yes, sir.

Q. He was able to do that?

A. With assistance.

Q. With assistance?

A. Yes, sir.

Q. You didn't speak to him in Italian at all, did you?

A. No, sir.

Q. Were you there during the whole period in which this statement was being taken?

A. Yes, sir.

Q. Stand there or stood there?

A. Stood there; yes, sir.

Q. How long a time was involved?

A. About an hour and a half.

Q. About an hour and a half?

A. Yes, sir.

Q. Well, were they talking all the time?

A. Most of the time.

Q. Who was doing most of the talking?

A. The interpreter.

Q. You don't know what he was saying?

A. No, sir.

Q. Well, you say the interpreter did most of the talking?

A. Yes, sir.

Q. Did the witness answer the interpreter sometimes?

A. Yes, sir.

Q. And then the interpreter would again repeat to the witness before anything was taken down?

A. Yes, sir.

Q. In other words, they had long conversations, and then the interpreter would say something, and Mr. Eaton would write that down?

A. Yes, sir.

Q. That consumed an hour and a half?

A. Yes, sir, about an hour and a half.

Q. Had you determined then to have the operation?

A. No, sir.

Q. When was it that you reached that conclusion and sent for these doctors for this operation?

A. Immediately upon the arrival of the patient.

Q. Did you send for them immediately?

A. Yes, sir.

Q. But it took them from 11 o'clock in the morning until four o'clock to get there?

A. No, sir. They arrived shortly afterwards, but did not decide to operate until in the afternoon.

Q. Did they see this man right away?

A. Yes, sir.

Q. Did they see him before this statement was taken?

A. Yes, sir.

Q. And having seen him before the statement was made—were they there when this ceremony was going on that you have described, for an hour and a half?

A. No, sir.

Q. Where were they?

A. They were down stairs.

Q. Well, now, I ask you again, what was it that occurred later that determined you to have this operation?

A. Well, it was up to the surgeon to decide that. They decided, I don't know why they decided to have the operation.

Q. When did they come in again?

A. They come in again about half past one and saw the man again.

Q. Yes. Did they then determine to have the operation?

A. Yes. Then they decided they would operate on him later in the afternoon.

Q. Not then and there, but later?

A. About four o'clock.

Q. Did they say they would wait until four o'clock?

A. Yes, sir.

Q. Give any reason for it?

A. Well, I heard—

Q. No. Did they give any reason for it?

A. They didn't give any reason.

Q. They did not give any reason?

A. No.

Q. Would the interpreter get more or less excited in his talking to the deceased?

A. No, sir.

Q. Would he jabber away, and the other fellow would reply, and then he would jabber back again?

A. Yes, sir.

Q. And then he would reply, jabber back again, and then he would reply?

A. Yes, sir.

Q. And pretty soon he would say, "He says so and so," and that would be written down?

A. Yes, sir.

Q. That was your understanding of it?

A. Yes, sir.

Q. I suppose the interpreter talked most, a great deal more than the sick man?

A. Yes, he talked more than the sick man.

Q. The sick man talked more or less in monosyllables?

A. Yes, sir.

Q. Were his answers given to this interpreter in English or Italian?

A. Italian.

MR. McCARTER: I think that is all.

RE-DIRECT EXAMINATION:

By MR. COAN:

Q. Who is this interpreter, doctor?

A. His name is Buckley.

Q. Where is he from?

A. From Elizabeth. I think he is a county detective, or something, I am not sure.

MR. STRICKER: I move that be stricken out.

THE COURT: I do not think that is important at all. He has testified, Mr. Coan, that the interpreter was a man by the name of Buckley.

MR. COAN: Yes, sir. Simply a matter of identification of the man, that is all.

FRED VAIL, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Where do you live, Mr. Vail?

A. Dunellen, New Jersey.

Q. What is your business?

A. I am a painter on the Central Railroad.

Q. State whether or not you were the same on the 19th of January last?

A. No, sir.

Q. What was your business on January 19th last?

A. I was American Express messenger.

Q. Where did your business take you?

A. Between New York, Carteret, Newark and Dunellen.

Q. Do you know where you were on the 19th of January last?

A. Yes, sir.

Q. Where were you then?

A. I was messenger on the train.

MR. McCARTER: A little louder.

A. I was messenger on the train.

Q. What train?

A. The train leaving New York 7:11 for Cartaret.

Q. What time did it get to Cartaret?

A. Due there about 8:06, I think, or about that time.

Q. Do you know where Williams & Clark station is at Cartaret?

A. I do.

Q. Did the train come to that station?

A. Yes, sir.

Q. Where were you?

A. I was in the baggage department of that train?

Q. As you approached Williams & Clark station state what you did, if anything?

A. Why, the train came to a stop and I looked out of the door.

Q. What door?

A. Baggage car door.

Q. Where is that door in the car?

A. That is on the side of the car.

Q. That is on the side of the car; which side did you come to?

A. You mean which side of the car did I look out of?

Q. Yes, sir?

A. The south side.

Q. And state whether or not this side is the side looking—

A. That is the side toward the Staten Island Sound.

Q. Towards the Staten Island Sound. What was between you and the Staten Island Sound?

A. Why, nothing.

Q. Well, was there any factories there?

A. There is a factory.

Q. What factory is it?

A. Chemical Company, and Williams & Clark.

Q. Where was Williams & Clark factory—having relation to where you were—to where Staten Island Sound is?

A. Staten Island Sound was right directly in front of me, and that Williams & Clark plant was more here to the south.

Q. Tell us what took place there as you approached the station?

A. The train was stopped, it came to a stop.

Q. At the station?

A. Before we came to the station?

Q. Before you came to the station?

A. There was a crowd of men came down to the track.

Q. Come down to the track, Mr. Vail?

A. Central Railroad track.

Q. Go on.

A. They stopped the train. One of them got up on the engine and several got on the car steps, and then we started again. And at the time we pulled into the Williams & Clark station a crowd of men came out of the Williams & Clark factory.

Q. Do you know what part of the factory they came from?

A. No, sir; they came from the gate, as near as I can say.

Q. What happened then?

A. As the men came out they shot into the air at first, and then turned and shot into the crowd.

Q. Where were they when they shot into the crowd?

A. Well, they were just about halfway between the terminal track and the Sound Shore track.

Q. What do you mean by the terminal track?

A. There is a terminal track runs along the fence. The Williams & Clark fence.

Q. It is nearer the fence than the Sound Shore track?

A. Yes, sir.

Q. Will you step down and look at this map, Mr. Vail, and see if you understand it?

(Witness does so.)

Q. Can you point out there where the passenger track is?

A. Yes, sir.

MR. COAN: That is all.

Q. Where is the terminal track?

A. That is the terminal track.

Q. Can you point—can you show us the point at which those men came out from the factory?

A. Came out right about here—came across here, came out to this gate here, came across here. (Indicating.)

By THE COURT:

Q. About where were they when they began to shoot?

A. I should judge about here. (Indicating.)

Q. And where was the other crowd?

A. The other crowd was lined along this track.

By MR. COAN:

Q. Where was your train about that time?

A. The train was coming in this direction.

Q. Had it as yet reached the station when the shooting started?

A. I don't remember; I don't think we had come to a stop at this station.

Q. How many men were there of those that came from the factory?

A. Well, I should judge between thirty to forty.

Q. And how many men did you say there was along the track?

A. Well, between two and three hundred.

Q. Now, what happened after these men fired into the men along the track?

A. These people ran here, and as our train stopped up there they came over to the train, and kept on shooting and turned in this manner.

Q. Where were you when all this happened, Mr. Vail?

A. I was in the hind car, dropped down here.

Q. Were you still at the doorway?

A. Yes, sir.

Q. What else did you see there then?

A. Well, there were some coal cars on there and some of these deputies got around these cars and two of the deputies got on the other side of the track and they were shooting across at each other in this way. As the train pulled on of course we saw these wounded people all around us, as we came on, but there was one man followed the train with a red sweater on, and he walked up—way up here—before we saw anybody help him. He had been shot in the breast and the blood was running out of him.

Q. Did you see any firearms, Mr. Vail?

A. These people that were shooting had firearms.

Q. What kind of firearms did they have?

A. Revolvers, and I saw one pump gun.

Q. Is that the only gun you saw?

A. That is the only gun I saw; yes, sir.

Q. How many revolvers did you see?

A. That I couldn't say; I guess every man had them.

MR. McCARTER: I move that be stricken out.

THE COURT: Yes.

MR. WESCOTT: I object to that being stricken out.

THE COURT: He said, "I guess;" I understand that.

MR. McCARTER: He said I judged.

(The answer repeated by the stenographer.)

THE COURT: That is merely a guess.

MR. WESCOTT: Isn't that equivalent to saying I judged.

THE COURT: No. I don't think so.

By MR. COAN:

Q. How many of those men did you see with revolvers, Mr. Vail?

MR. STRICKER: I object.

THE COURT: Why?

MR. STRICKER: Why should he say about; why should the question be propounded to him to lead up to another guess?

THE COURT: He asked him what he saw. He told us what he saw. For instance, he judged by the size of the crowd where he said he saw about thirty or forty in the crowd, and that is a fair estimate. There is nothing wrong about that.

MR. STRICKER: He asked about how many had revolvers.

THE COURT: I will allow the question. Take an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. I should judge they all had revolvers.

Q. Mr. Vail, did you observe anything taking place just before the shooting started?

MR. McCARTER: Beg pardon?

MR. COAN: I asked him if he had observed anything taking place before the shooting started?

A. No, sir; I didn't.

Q. What was the first evidence of shooting that you saw?

A. These men ran out from the gate.

Q. How far away from the gate had they gone when they started shooting?

A. Well, I should judge about here. (Indicating.)

By THE COURT:

Q. About how many feet?

A. About 125 feet.

Q. How far were they from the crowd they were shooting at?

A. 150 feet.

By MR. COAN:

Q. These men that came from the factory, Mr. Vail, state whether or not they were all together?

A. Yes, sir; they all came down in a bunch.

Q. Did they remain in a bunch?

A. No, sir; they spread out, and after they got about here they spread out and some ran over here and some ran over there.

Q. Did you see any firearms loaded there?

MR. STRICKER: I object to that question, if your Honor please.

THE COURT: Why?

MR. STRICKER: It is leading.

THE COURT: I will overrule the objection. Answer the question.

A. Yes, sir; I saw a man load a pump gun.

Q. Where did he do that, Mr. Vail?

A. He did that right here. (Indicating.)

By THE COURT:

Q. Give us how near the railroad station?

A. It was within ten feet of the train.

By MR. COAN:

Q. And where was he with reference to the station?

A. He stood right this side here. (Indicating.)

Q. Opposite the station?

A. Yes, sir.

Q. State whether or not this was one of the men who had come from the factory?

A. This was one of the men that came from the factory.

Q. The men were all along the railroad track, will you state whether or not they had firearms?
A. I did not see anyone; no, sir.
MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. You changed your employment since that date?

A. I have, sir.

Q. Your employer at that time was the American Express Company?

A. Yes, sir.

Q. Did you voluntarily leave there?

A. I didn't; no, sir.

Q. You were discharged?

A. I was; yes, sir.

Q. For drunkenness?

A. No, sir.

Q. For what reason?

MR. WESCOTT: I object.

THE COURT: This front is so high that the sound is cut off.

(Question and answer repeated by stenographer.)

By THE COURT:

Q. Discharged from what office?

A. Express office.

MR. COAN: As express messenger he was employed at that time.

MR. WESCOTT: That is objected to.

THE COURT: Why is that competent? You can ask if he has been convicted of any crime.

MR. McCARTER: No.

THE COURT: I overrule the objection then.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Now, your train stopped before it reached the station, didn't it?

A. Yes, sir.

Q. When were you discharged?

A. I was discharged on the—

MR. WESCOTT: That is objected to. It is immaterial when this man was discharged. How does this affect the testimony?

THE COURT: I will allow that one question.

Q. (Repeated by Mr. McCarter.) When were you discharged?

A. April 1st.

Q. Now, your train stopped before it reached the station, didn't it?

A. Yes, sir.

Q. It wasn't due to stop until it reached the station, was it?

A. No, sir.

MR. STRICKER: Speak up a little louder.

Q. Did you see a rail across the station—and a red—across the tracks—and a red sweater stuck up on the pole?

A. I didn't.

Q. Did you know they were there?

A. No, sir.

Q. You didn't see anything of that kind?

A. No, sir.

Q. You were the conductor of this train?

A. I was an express messenger.

Q. Well, where was—about how far north of the station did the train stop?

A. About 300 feet.

Q. Yes. And you didn't see these impediments removed from the track?

A. No, sir.

Q. Didn't look down that way?

A. I might have looked that way but I didn't see.

Q. Will you say they weren't there?

A. I wouldn't say they weren't there; I didn't see.

Q. Did you say a man got on the train?

A. I saw a man step on the steps.

Q. The steps of your car?

A. Not of my car; no, sir.

Q. Was your car first or last?

A. My car was last.

Q. How many cars were there?

A. Five.

Q. How far was your car, or the door of your car, from the station?

A. 500 feet.

Q. Was the door open or did you open it?

A. I opened it.

Q. You heard a noise, didn't you?

A. No, sir.

Q. What?

A. No, sir.

Q. Just opened the door?

A. When the train stopped, then I opened the door.

Q. And as soon as it stopped, what did you see along the track—a crowd of men?

A. A crowd of men, and were—we will call them strikers to distinguish them from the deputies.

Q. Were they the men you saw?

A. The strikers I saw first, yes, sir.

Q. Where were they?

A. On the track.

Q. Getting on the train?

A. I saw one or two getting on the car.

Q. You say there were three or four hundred in number?

A. Yes, sir.

Q. Did some of them get on the engine?

A. I saw one man getting on the step of the engine.

Q. Were they on both sides of the train?

A. I couldn't say about the one side.

Q. You saw some of the strikers on that side of the train?

A. That is the side I was on.

Q. You saw how many, three or four hundred?

A. That was three or four hundred; I couldn't see on the other side.

Q. You only saw your side?

A. Yes, sir.

Q. And you saw three or four hundred?

A. Yes, sir.

Q. On the factory side of the train?

A. Yes, sir.

Q. Did you see anything in their hands?

A. Some of them had clubs; yes, sir.

Q. See any stones?

A. No, sir.

Q. See any pieces of iron?

A. No, sir.

Q. Were they yelling?

A. Yes, sir.

Q. And did they enter the cars, get into the cars themselves?

A. I didn't see any. No, sir.

Q. Now you say you saw some men come out of the Williams & Clark plant?

A. Yes, sir.

Q. And you have pointed out the place where you saw them come out?

A. Yes, sir.

Q. Will you go to the map and do that again?

A. (Witness does so.) There should be a gate right about here (indicating).

Q. Have you got it right?

A. Yes, sir.

Q. Won't you designate it by a little more—we will call it "X" for the purpose of identification—at the place where you saw these men come out of the Williams & Clark plant?

A. (Witness does so.)

Q. You are quite sure you have that right within a few feet one way or the other?

A. I think so.

Q. There was a gate there?

A. Yes, sir.

Q. They came out of the gate?

A. Yes, sir.

Q. Did you see the gate open?

A. I couldn't say I did; no, sir.

Q. What?

A. No, sir.

Q. How do you know they came out of the gate then?

A. Because the gate was there.

Q. What?

A. Because the gate was there.

Q. Was the gate open or shut?

A. I couldn't say.

Q. What?

A. I couldn't say.

Q. Had they come out of the gate before you saw them?

A. I don't know.

Q. What?

A. I don't know.

Q. The train had stopped.

A. When they came out?

Q. Yes, sir?
A. No, sir; we were coming along.
Q. What?
A. We were coming along.
Q. Had it started again?
A. It had stopped once before up here.
Q. That is, after the train had stopped and started once again you saw these men come out?
A. Yes, sir.
Q. What?
A. Yes, sir.
Q. Won't you locate yourself at this time when your train stopped with reference to that point you have marked "X" as well as you can?
A. I would be back around here. (Indicating.)
Q. Just mark that "Y" somewhere?
A. (Witness does so.)
Q. So you think you were there at that time you saw them come out of that gate?
A. Yes, sir.
Q. After the train was started again?
A. Yes, sir.
Q. What?
A. Yes, sir.
Q. In the meantime the three hundred or more men that were on that side of the track were standing there?
A. No, sir; they ran up this way.
Q. They ran up toward the station?
A. Yes, sir.
Q. Followed the train?
A. Yes, sir.
Q. Train moving slowly?
A. Very slowly.
Q. Yes. How many clubs did you notice among these—what I will call rioters for the sake of distinction?

A. Nearly all of them.
Q. Nearly all of them?
A. Nearly all of them.
Q. They were all men?
A. Men and boys.
Q. They all had clubs?
A. Yes, sir.
Q. What were they running down for? Did you hear them say anything?
A. No, sir; I didn't.
Q. Did the train stop again at the station?
A. No, sir.
Q. What?
A. No, sir.
Q. Didn't?
A. Did the train stop?
Q. Yes. Again at the station?
A. Yes, sir.
Q. It did the second time?
A. Yes, sir.
Q. Did they board the train again?
A. No, sir.
Q. Are you sure about that?
A. Yes, sir.
Q. Were they brandishing those clubs?
A. Yes, sir.
Q. And yelling?
A. Yes, sir.
Q. I am speaking of the rioters now?
A. Yes, sir.
Q. You understand that. Were you accustomed to go up and down by this place every day?
A. Yes, sir.
Q. And accustomed to stop at Williams & Clark station?
A. Yes, sir.

Q. And you knew where the office of the Williams & Clark plant is?
A. Yes, sir.
Q. You know there is a switch goes in there?
A. Yes, sir.
Q. Did the men board the train at the station—the rioters?
MR. WESCOTT: Don't call them rioters, please.
MR. McCARTER: I said that to distinguish them.
Q. The crowd of three or four hundred—did any of them board the train at the station?
A. Not to my knowledge; no, sir.
Q. You didn't see them get on there?
A. No, sir.
Q. You don't say they didn't get on, but you didn't see them?
A. No, sir.
Q. Do I understand some—of what you call deputies—got over on the west side of the track?
A. Yes, sir.
Q. While you were standing there at the station?
A. While we were standing at the station.
Q. At the station?
A. Yes, sir.
Q. How did they get over there?
A. I don't know.
Q. How do you know they were there?
A. They shot.
Q. One moment. How do you know they were deputies?
A. Because they had clubs and revolvers.
Q. You saw some men on the west side of the train with clubs and revolvers shoot?
A. Yes, sir.

Q. How they got on that side of the track you don't know?

A. No, sir.

Q. Where were those men on the west side of the track that were doing the shooting that you witnessed?

A. They were back of the baggage car.

Q. That would locate them about where?

A. I should think about in here. (Indicating.)

Q. I suppose you say with a "T" for that?

A. (Witness indicates.)

Q. "T" therefore means the spot where the men were on the left-hand side—that is the west side of the track—that were shooting that you saw?

A. Yes, sir.

Q. And they had bludgeons or clubs, and they also had pistols?

A. Yes, sir.

Q. And they were facing towards the Williams & Clark plant, weren't they?

A. No, sir.

Q. How were they shooting?

A. They were shooting at two more deputies who stood back of the coal car.

Q. They were shooting towards the east, towards Williams & Clark's?

A. Yes, sir.

Q. Now you observed those men you have just referred to who stood west of the track and who were shooting towards the Williams & Clark plant at the deputies over there. Then you saw the deputies shooting around the train?

A. What is that?

MR. WESCOTT: I object to the question. This gentleman has not said he saw anybody shooting toward the deputies.

THE COURT: What is the objection?

MR. WESCOTT: I object to incorporation any question of fact that hasn't been proven, for the purpose of making this evidence appear what it is not. The first piece of criticisable conduct was the characterizing of these people as rioters. After my distinguished friend's attention was called to that he stopped it. This witness stated what he saw in the first place. He saw some people he called deputies come out from a gate towards the railroad and shooting. Now the cross examiner got him to state that he saw people shooting towards the factory, but the witness didn't say that these rioters were shooting at these deputies and counsel ought not to be permitted to assume in the question that the witness said that, in order to get this before this jury.

THE COURT: I doubt if that is in his question. I understand the question to be whether these men were not shooting towards the factory.

(Question repeated by stenographer.)

THE COURT: Suppose you re-draft the question.

MR. McCARTER: I don't want to be re-drafting the question as if he has not said they were shooting at the deputies. He said it on the direct examination. The record speaks for itself, and that will appear later, but I will ask you this question.

Q. That is so, is it not, Mr. Vail; at the time when you observed the deputies shooting under the train, or subsequent to the time that these men to the west of the track were shooting towards the Williams & Clark plant; it was after that time? If you don't understand the question

we will have it read to you. I want the answer to that question.

(Question repeated by stenographer.)

A. I saw these men shooting after I saw the deputies shooting under the train.

Q. Do you understand my question?

A. Yes, sir; I understand the question.

Q. Was it before or after you saw these deputies shooting under the car that you observed these men to the left of the track shooting towards the Williams & Clark plant?

A. It was after.

Q. How long after; immediately?

A. Right away.

Q. Right away?

A. Yes, sir.

Q. Practically instantaneous?

A. No, they were shooting here. And when I heard the shooting here, I walked along to the back door and I looked out and I saw these too shooting here.

Q. Now, the men who stood towards the Williams & Clark plant—at who these men on the left-hand side or west side of the track direction shot—were deputies?

A. Yes, sir, they hollered to them, "Not to shoot; don't shoot."

Q. Now you said you didn't observe anything before the shooting while you observed the train stop; that was unusual, wasn't it?

A. Yes, sir.

Q. You observed some of these three or four hundred men that my friend, the Attorney General objects to being called rioters—we will call them strikers—you observed some of these strik-

ers getting on the train before you observed this shooting?

A. Yes, sir.

Q. That was unusual?

A. Yes, sir.

Q. You saw a crowd of three or four hundred men brandishing clubs and shooting?

A. Yes, sir.

Q. That was unusual?

A. It wasn't unusual to see a crowd.

Q. Three or four hundred men and stopping a train?

A. Stopping a train, yes.

Q. That was unusual?

A. Yes, sir.

Q. And you saw some of these men enter the engine and get on the platform; that was unusual?

A. On the step of the engine.

Q. That was unusual?

Q. And in fact it was unusual for the train to stop there at all?

A. At the station?

Q. No. At the other place where it stopped?

A. Yes, sir.

Q. How long did the train stop?

A. Just long enough for the conductor to tell them there was nobody on there.

Q. What?

A. Just long enough for the conductor to tell them there was nobody on there.

Q. Did you hear him tell that?

A. No, sir.

MR. McCARTER: I ask that that be stricken out.

Q. How long did they stop there?

A. I should judge about two minutes.

Q. Where was the conductor?
A. In the front end of the train.
Q. Did you see him there?
A. No, sir.
Q. What?
A. No, sir.
Q. Just tell us what you yourself know, Mr. Vail.
A. He wasn't back where I was.
Q. Did you hear anything that these strikers said?
A. No, sir.
MR. McCARTER: That is all.

RE-DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Vail, did you see anybody shooting at the men who came out of the plant?

MR. STRICKER: I object, if your Honor please.

MR. McCARTER: That is a leading question.

THE COURT: What ground?

MR. STRICKER: On the ground it is a leading question.

THE COURT: Answer the question.

A. Yes, sir; I saw two men shooting at two others.

Q. Shooting where?

A. At two others.

By THE COURT:

Q. Where were they?

A. Two were here and two were over here.

Q. State whether or not these two men were what have been called strikers or deputies?

MR. McCARTER: I object to that.

THE COURT: How can he tell where they were located.

By THE COURT:

Q. Were these two men near the Williams & Clark factory which you saw shooting members of the body of men you saw coming from the factory?

A. In my opinion they were; yes, sir.

By MR. COAN:

Q. Why are you sure they were, Mr. Vail?

MR. STRICKER: I object, if your Honor please.

THE COURT: I think that is competent. Proceed.

A. Because this fellow hollered to the others to stop.

MR. McCARTER: What is that?

A. These fellows back in the car hollered to these other fellows to stop it.

Q. Did they stop then?

A. Yes, sir.

MR. COAN: That is all.

GEORGE H. JACKSON, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Where do you live, Mr. Jackson?
A. Roselle Park, New Jersey.
Q. What is your business?
A. Locomotive engineer.
Q. By whom are you employed?
A. Central Railroad of New Jersey.
Q. Were you so employed on the 19th day of January last?
A. I was.
Q. What train did you have on that day?
A. I had my regular passenger train.
Q. Where does that train run from and where does it run to?
A. Runs from Elizabethport to Chrome and return.
Q. What time is it due at Chrome?
A. 8:06.
Q. Do you remember the morning of the 19th of January last?
A. I remember some of it.
Q. Do you remember coming into the Williams & Clark station on the 8:00 o'clock trip that morning?
A. I was there.
Q. And state what you saw?
A. As we approached the station I saw a crowd over on the west side of the track, and some man ran alongside of the engine calling me to stop, that there were ties on the track, and we stopped. I saw an obstruction ahead.

A. Well, I suppose—

Q. What happened after you stopped?

MR. McCARTER: No.

A. (Continued.) The men went through to see if there was any strikers or strikebreakers.

THE COURT: You don't know that.

MR. COAN: Did you see them?

THE WITNESS: No, sir.

By MR. COAN:

Q. Did anybody get on your engine?

A. Not when we were standing still.

Q. Then you started again, did you?

A. When we started there was a man got on the front step in the rear of the parlor, and I called to him to get off, and then another man got on and shouted to me after he got off.

Q. You were on the west side of the track; yes or no?

A. Yes, sir.

Q. And were you able to see the factory, the Williams & Clark factory, from where you were?

A. Not the way I was looking; if I had a mind to look to the left or east side I could see the track, but otherwise no.

MR. STRICKER: Do you mean the east side of the engine or the track?

THE WITNESS: Both. The east side of the engine is towards Staten Island Sound and so is the east side of the track. There is only two divisions on our road, east and west.

Q. State whether or not you saw anybody coming from the factory, Mr. Jackson?

A. I couldn't see anybody unless I made a special effort.

Q. Did you hear or see shooting?

A. I heard a shooting, but I didn't see it.

Q. You didn't see the shooting. Where was that shooting that you heard?

A. It seemed to be in the rear of the train—rear of the engine.

Q. On the side?

A. On the east side.

Q. Where were the strikers at that time?

A. Well, I think they were strikers; there was a crowd up on the west side. There is a "Y," a railroad "Y," and they were up there on that track.

Q. Will you come down to the map and show us where those men were?

A. I don't know as I can trace the map.

Q. Well, come down and look at it and see?

A. (Witness does so.) That is the passenger track, that must have been here. (Indicating.) They must have been here, as near as I can judge.

Q. What track is that?

A. That is the track that leads off the east railway branch that comes out and goes on to Chrome or to Elizabethport, in either direction.

Q. Where was this crowd of men you saw as far as the station is concerned?

A. They were about over here. (Indicating.)

Q. Then they were not on the passenger track?

MR. STRICKER: I object, if your Honor please. I submit this is—

THE COURT: I will allow that.

Q. (Question repeated by the stenographer.)

A. I didn't see anyone on the passenger track. They were alongside of it.

Q. How far from the track were they, those who were alongside of it?

A. They were so close that when we started

I was afraid we might strike somebody, and I kept looking directly ahead, I didn't want to have anybody injured.

Q. How many would you say were along the line of the passenger track?

A. It might be ten or twenty; maybe less or maybe more.

Q. Where was the bulk of the crowd?

A. Over here on the bank.

Q. Will you state whether or not there were any men on the track that leads out to East Rahway?

A. I don't remember about any—the people I remember—if I am speaking correctly—I think as near as my knowledge—they were mostly over here, because I think this place was water between the station and this track. Whether it came from the high tide or rain I don't remember.

Q. After you heard the shooting, what happening, what happened, if anything?

A. I don't know what happened after the shooting. We got on at the time they done that.

Q. Did you see this crowd after the shooting?

A. No, sir; I didn't see them any more then running.

Q. You saw them run, did you?

A. I saw them running.

Q. Which way did they run?

A. They run off west.

Q. What did they run over when they run to the west?

A. I suppose they ran over marshy ground; I don't know particularly about that. I am not acquainted with the nature of the ground.

Q. Did you see any of the men on the ground who were shot?

MR. McCARTER: I think this witness ought to be able to tell what he saw without being led.

THE COURT: Ask him what he saw. Apparently, as I understand it, he didn't see anything until the train left he saw where the crowd was standing.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Mr. Jackson, you didn't look back, did you?

A. No, sir.

Q. At any time?

A. After we started I might have looked back.

Q. You are located on the right side of the engine?

A. Yes, sir; right side, in that direction. (Indicating.)

(Witness takes his seat again.)

Q. You saw the obstruction on the track?

A. Yes, sir.

Q. You saw a pole with a red sweater or something stuck up there?

A. No, I didn't see that.

Q. That you didn't see?

A. No, sir.

Q. But there was a rail or two across the track?

A. I saw a trunk of a tree; I suppose there was ties—they said there was ties on the track.

Q. You were told there was ties, but what you actually saw there was the trunk of a tree?

A. Yes, sir.

Q. That was something there unusual?

A. I should say so.

Q. And therefore your attention was directed more to the front of the train than it was to the side?

A. Certainly.

Q. That is correct, isn't it? Three or four hundred people congregated there.

A. I should judge by the movement of the people there must have been as many as that.

Q. You don't want to say now on your oath that that crowd or congregation you speak of were all strung along here.

A. No, they were scattered; I am speaking about the principal body of the people as I seen them.

Q. That is the principal body of the people?

A. Yes, sir.

Q. And you are not sufficiently familiar with the situation on that morning even to attempt to estimate the number that were on this track?

A. No, no, I couldn't say that.

Q. And you couldn't say how many were strung along here, main track?

A. No, I don't think there was any in there.

Q. Your observation was directed principally to the front of the track?

A. Principally to the front of the train, to the crowd on the west side.

Q. The crowd on the west side at the railroad around the engine were more easily to be seen by you than on the east side?

A. Yes, sir.

Q. By reason of the position you occupied in the locomotive?

A. I couldn't see anybody to the east side.

By THE COURT:

Q. Can't you see to the east in advance, ahead of your train?

A. Yes, if there was anybody on the track—if there was a crowd on both sides of the track you would see them if your attention was called, so you would like to run through them without striking anybody.

THE COURT: No, I am not disputing that.

A. What I mean by that is looking this way I

would have to look particularly to see them on the side, where I could see them if they were in front of me.

Q. Did you observe any people along the track —on the track after it stopped?

A. No, sir.

Q. Did you notice any getting on while the train was in motion?

A. No, sir; only the two men that got on the train.

Q. Which side did they come from?

A. From my side, west side.

Q. West side. Where was the train at the time they boarded the locomotive?

A. It was pretty close to the station.

Q. About how far above the station was it that train first stopped?

A. We stopped this side of the station.

Q. About how far this side of the station?

A. I don't know the number of feet. I couldn't say whether it was 100 or 200 feet. I know the obstruction was this side of the station and we stopped this side of the obstruction.

Q. About how far was the obstruction this side of the station?

A. About 50 feet.

Q. How far were you this side of the obstruction?

A. I was about the same distance.

Q. Did these men say anything to you that got on the locomotive?

A. No, sir.

Q. How long did they remain on?

A. Just until I called one. As soon as I seen one get on I called him off, and he got off and

another one got on, and I don't know whether he went ten feet or twenty feet and he got off.

MR. STRICKER: That is all.

DANIEL SULLIVAN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. What is your business, Mr. Sullivan?
A. Conductor on the Central Railroad.
Q. Speak louder.
A. Conductor on the Central Railroad of New Jersey.
Q. You were such on January 19th last; you were conductor on January 19th last?
A. Yes, sir.
Q. Where did your train go to on this date?
A. We ran from Jersey City to Chrome.
Q. What time did you get to Chrome?
A. We got there about 8:12; something like that—14.
Q. Do you know where Williams & Clark station is?
A. Yes, sir.
Q. Do you remember approaching that station on the morning of January 19th?
A. Yes, sir.
Q. What took place then?
A. We approached the station; we came into the station. We seen an obstruction on the track and the engineer stopped.
Q. What then?
A. I got on the ground and walked ahead of the engine.
Q. What did you see?
A. There was a fellow standing there by this obstruction.
Q. What did you see?

A. A big log and a piece of a guard rail, and he asked me if there was any strikers on the train. I told him there was none.

Q. Well, what happened?

A. He said something about—motioned to the men to go back there or something, and I told him no use going back there, for there was nobody on the train except our regular passengers; we had no strikebreakers of any description on the train, so that he ordered these logs off the track.

Q. Were they taken off?

A. Yes, sir.

Q. Where were those men that he motioned to?

A. They were right down here. Right around where he stood.

Q. How many of them were there?

A. Well, I should judge they were all around there. There was a crowd in the neighborhood of 175 to 200 men.

Q. Where were those 175 or 200 men located?

A. On what we call the north side of the track, right hand side.

Q. On the right hand side of the track?

A. Yes, sir.

Q. That is as the train faced that morning?

A. Yes, sir.

Q. What did you do after the obstructions were were removed?

A. I walked back to the engineer and told him to go on, and we pulled out of there.

Q. Did you go down to the station?

A. We went right on, we didn't stop.

Q. Did you stop at the station?

A. No, we didn't make the station stop.

Q. Can you show us on this map where this log was located on the track?

A. I should judge about 200 feet east of the station, something like that.

(Answer repeated by the stenographer.)

THE COURT: Now you can measure it on the map, so he don't have to guess about it.

Q. Was there any shooting going on there?

A. Yes. Yes, I was talking to this fellow, and just as I turned around I seen fellows coming over —three a little ways off of me—come from this fertilizer works.

Q. What fertilizer works is that—what was the name of it?

A. It is the Williams & Clark Fertilizer Works.

Q. How many were there coming from those works?

A. Now I couldn't judge; it might have been fifteen or twenty, something like that.

Q. How were they coming?

A. When I looked around and seen them they were walking over that way toward the tracks.

Q. Were they all together or apart, or how?

A. They were apart, coming in different directions.

MR. McCARTER: Speak a little louder.

Q. Where did they come from?

A. I didn't see them come out of the fertilizer works, so I couldn't say; they were this side of this when I first saw them.

Q. Where were they when you first saw them?

A. They were about halfway between the fertilizer works and the track.

Q. Do you know what the terminal track is there?

A. Yes.

Q. State whether or not they had crossed the terminal tracks?

A. I didn't take particular notice whether they were or not.

Q. What did they do?

A. Well, I was very anxious to get out of there—

By THE COURT:

Q. No. Answer the question, what did they do?

A. I couldn't see what they done. I couldn't say what they done. They came over that way and I couldn't say what they did do. I wasn't watching them. I was watching the train to get out of there.

Q. Did you see any shooting done?

A. Yes, sir.

Q. Who did the shooting?

A. I couldn't tell you. The men from the fertilizer works on this side of the track.

Q. Did you see any firearms?

A. Yes, sir.

Q. Where did you see them?

A. I seen them in the men's hands.

Q. In the man's hands?

A. The men that came from that direction.

Q. And when you say from that direction, what direction do you mean?

A. From the fertilizer works.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. This crowd of 175 or 200 men—

THE COURT: It is now just about one o'clock, Mr. Stricker.

Whereupon, at 1:00 o'clock P. M. an adjournment was taken until 1:45 o'clock P. M.

AFTERNOON SESSION, 2 P. M.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Where do you live?

A. Elizabeth.

Q. And you have been a conductor of the railroad for how long? That is, on this particular run?

A. On this particular run?

Q. Yes?

A. About two years.

Q. And as you approached that station that morning you observed a large number of men there, did you?

A. Sir?

Q. You observed a large number of men?

A. Yes, sir.

Q. And a large number of them had clubs and stones in their hands?

A. I didn't see any stones. They seemed to have clubs.

Q. Where were the men who had the clubs located? Which side of the track?

A. They were located on the—the majority of

them was—they were all on the right hand side. On the north side.

Q. It has been alluded to as the west side, that is the Carteret side has been alluded to as the west side?

A. West side.

Q. And the sound side has been alluded to as the east side?

A. The east side.

Q. The men with the clubs were on the west side?

A. Yes, sir.

Q. I suppose a couple of hundred of them had clubs?

A. Well, no, not a couple of hundred of them, I don't think. They didn't all have clubs. I seen some of there didn't have them.

Q. But the majority of them had clubs, didn't they?

A. A majority had clubs in their hands.

Q. This crowd was quite noisy, wasn't it?

A. Well, no, they wasn't noisy. They walked down along our train but they wasn't noisy. I didn't hear them making much noise.

Q. How many of those men got aboard of your train?

A. Well, now, I couldn't say. I seen two or three of them get up on it.

Q. And did the men who got on the train have clubs?

A. Yes, sir.

Q. Were they passengers on your train?

A. Yes, sir.

Q. Were the men with the clubs passengers? Did they have tickets?

A. Oh, no; passengers didn't have no clubs. It was the men.

Q. I mean the men with the clubs were not passengers of your train?

A. Not passengers of our train.

Q. And they went through your train, didn't they?

A. Well, I didn't see them go through, because I was up ahead.

Q. Did you see any of those men get on the train?

A. Yes, I see them get up on the step.

Q. Did the men with the clubs that got on the train remain on, or did they get off before the train started?

A. They got off of the train as it started.

Q. Do you know why they got on the train?

A. They were looking for strikebreakers.

THE COURT: Answer first do you know why they got on the train.

A. They were looking for strikebreakers. They were looking for passengers to see if there were any strikebreakers on there.

Q. How many cars were there on the track that day when your train stopped?

A. Only one.

Q. And did you notice a post there or a pole with a red sweater on it, or a red cloth?

A. No, I didn't notice that.

Q. You say the men who did the shooting were on the east side of the track, is that correct?

A. Correct.

Q. And which direction were they shooting?

A. Shooting towards the east side—the west side.

Q What were they shooting with?

A. Well, they had revolvers.

Q. All of them?

A. I seen one man there with a gun.

Q. Was he shooting?

A. I didn't see him shoot. I seen him with the the gun.

Q. Did you notice any of these men who did shoot, shoot up in the air?

A. No, I didn't.

Q. Did you see any of them shoot on the ground?

A. Seen them shooting low, yes.

Q. How many men did you actually see shooting?

A. Well, I couldn't say how many. I heard several reports, you know. I couldn't say.

Q. Just eliminating from your mind what you heard, and confining yourself entirely to what you saw, how many men would you say you saw actually shooting?

A. Well, I only seen five or six of them there shooting.

Q. And those five or six that you saw shooting, were somewhere along in here (indicating on the map). Just step down here a minute please. Somewhere in here?

A. They were on the east side.

Q. Well, this is the railroad station?

A. Yes.

Q. Now, were the five or six men that you saw shooting in this area here?

A. This is the main line?

THE COURT: I do not know about that. You had better point out to him where the factory was.

MR. STRICKER: The factory is right in here (indicating on map). Here is the little railroad station.

A. Right in here (indicating on map), right between the station and the—

Q. And the factory?

A. And the factory.

Q. This is the station and this is the factory; then necessarily they were in here, weren't they (indicating on map)?

A. Yes, sir.

Q. Could you take that pencil and indicate the area approximately where those five or six men were that you saw shooting?

A. I don't think the factory is as far as that from the depot.

Q. Well. Assuming that it is, assuming that the factory is in here inside of this dotted line, that the little railroad station is in there, now can't you indicate to us approximately where you saw the shooting?

A. The shooting was right down around in here.

Q. Yes, but that is not on the east side of the station?

A. That is right around in here.

Q. Let me set you straight. This is north and this is south. (Indicating.) Your train came from this direction, didn't it?

A. Wait until I get that map right. This is East Rahway and this is the main line. Right up around in here.

Q. Am I correct when I make a mark like this, is that about right?

A. Right about in there.

Q. Supposing we mark that "A." All right, Just take a seat.

A. Wait until I see. This is right around in there.

Q. You got off on the factory side, didn't you, when the train stopped?

A. Yes, when the train stopped, I got off on the factory side and walked up.

Q. You walked up to your engine?

A. Up to my engine.

Q. Well, the engine hadn't gotten beyond the station, had it?

A. No. The engine was up in here (indicating). This happened right in front of our engine.

Q. When you got up to the engine, what did you do?

A. I walked up to where the obstruction was.

Q. And did you recognize anybody there?

A. Yes. I was talking to some gentleman who stood there, with a red moustache. I was talking to him and told him we had no strikers on the train.

Q. Would you recognize that gentleman if he were here?

A. Yes, sir. Because I was talking to him.

MR. STRICKER: May I ask you gentlemen whether you have subpoenaed a man by the name of Yeager?

MR. COAN: Yes, sir; we did.

MR. STRICKER: Will you kindly ask him to step in here for a moment.

THE COURT: Proceed with the examination.

Q. Was it usual for this thing to happen at that station?

A. Sir?

Q. Was this usual or unusual?

A. It was unusual.

Q. I presume that your mind was fixed more on getting your train under way than anything else?

A. Yes, sir. That was my intention of getting out of there as quick as I possibly could.

Q. And therefore, what you have testified to

here this morning or rather today, is your best recollection of it?

A. Yes, sir.

Q. You would not want to say positively that it is all accurate, would you?

A. How is that?

Q. You would not want to say positively that what you have told us here is absolutely accurate, would you?

A. Well I—

By THE COURT:

Q. You understand the question, don't you?

A. What did you mean by that?

By MR. STRICKER:

Q. Why, it is absolutely correct?

A. Oh, yes; certainly.

Q. Your recollection is perfect on that?

A. Yes, sir.

Q. And the fact that there was more or less excitement around there, and that you tried to get your train away, doesn't affect you a bit?

A. No, it didn't affect me.

Q. There was a lot of confusion there that morning, wasn't there?

A. A lot of it. It didn't affect me, no.

Q. You were interested in seeing your train get away?

A. My train get away.

Q. Take a look at this gentleman and see whether you recognize him or not?

A. Yes, sir.

Q. Is that the gentleman?

A. That is the gentleman, yes, sir.

Q. That came up to you?

A. That I was talking to, that we had no strike-breakers on the train.

Q. Did he ask you whether you had any strikebreakers on the train?

A. Yes, sir. He did. Asked me if we had anybody on there, and I told him no.

MR. STRICKER: Put on the record the witness alludes to Julius Yeager, who is produced in court for identification.

Q. Did he have anything in his hand?

A. I didn't notice anything in his hand, no.

Q. Was he alone or was there somebody with him?

A. There was two or three standing around close by.

Q. And you held some other conversation with him besides that?

A. No, no other conversation at all, only—nothing more than I told him he hadn't ought to be holding us, that we had no strikebreakers on, to let us go.

Q. Why did you say to him that he ought not to be holding you?

A. Well, because we had nobody on there.

Q. I know, but what was he doing that inspired you to tell him not to hold you there?

A. Why, because he had obstructions on the track, and I told him to get them off, or something like that, and let us go.

Q. Well, he said to you that he was after strikebreakers?

A. Asked me if there was anybody on there, got strikebreakers on there.

Q. As a matter of fact did he use the words "scabs?"

A. Well, I don't know whether he did or not, no.

Q. You would not be certain about that, would you?

A. I would not be certain about that, about scabs, or not.

Q. Where was he at the time you held that conversation with him?

A. Right by these obstructions.

Q. Had he been on the train?

A. No, sir.

Q. Did you have any of the crowd who had congregated there that morning on your train after they got off, that is to say, that they remained on until your train went to Liebig, about a mile below?

A. I went through the train and I found one, and I put him off. Some of the passengers made remarks, there is one of them there; and I put him off.

Q. How many men do you say were at that station that morning approximately.

A. Well, I should judge the crowd around there was in the neighborhood of 175 or 200, or something like that.

Q. That is on one side of the track?

A. Yes.

Q. And how many were on the other side of the track?

A. Well, about in the neighborhood of fifteen or twenty.

Q. How many would you estimate were strung along the track?

THE COURT: Which side?

MR. STRICKER: Either side.

A. Well, I didn't notice. They walked down along our train, a few of them, maybe four or five of them, after we stopped.

MR. STRICKER: That will be all.

JOSEPH R. BUCKLEY, a witness introduced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Where do you live, Mr. Buckley?
A. At 212 John street, Elizabeth, New Jersey.
Q. What is your nationality?
A. Italian.
Q. Look at that paper there that is before you.
A. (Witness looks at paper.)
Q. Is your name signed to that?
A. Yes, sir.
Q. Where were you when you signed it?
A. At the Alexian Brothers Hospital at Elizabeth, New Jersey.
Q. Who else was there?
A. Mr. Eaton and Dr. Roach.
Q. Anybody else?
A. I am not sure that the prosecutor was there at the time it was signed. To my recollection I think it was only Mr.—
Q. What other people signed the paper besides you?
A. Mr. Eaton and Dr. Roach.
Q. Who?
A. Mr. Eaton and Dr. Roach.
Q. Anybody else?
A. I am not sure if the Prosecutor signed it or not.
Q. Just look at it and see if you see any other signature?
A. Oh, the patient.
A. Alesandro Tessitore.
Q. You knew him did you?

A. It was the first I had met him.

Q. What was said to him by anybody before he signed the paper?

A. Why, he was told that he was about to die.

Q. Who told him that?

A. I did, and the doctor.

Q. Anybody else?

A. The doctor told me that he could not live.

Q. And you told him?

A. In Italian.

Q. And the doctor was there?

A. The doctor was there. Yes, sir.

Q. Then what did the patient say?

A. Why, he said, "Why, it ain't only the doctor that knows that, or words to that effect. It is not only the doctor that knows that. The exact words I can't remember, but words to that effect.

Q. Not only the doctor knew that he was going to die?

A. It is not only the doctor that knows I am going to die.

Q. Did he say anything to you on that subject, that he was going to die?

A. Why, he told me that he felt pains in his stomach, that he felt as though his stomach was full of water.

Q. Were you there when he signed this paper?

A. I was; yes, sir.

Q. Saw him sign it?

A. Yes, sir.

Q. Who wrote the paper?

A. Mr. Eaton.

Q. It is in his hand?

A. Yes, sir.

Q. How did Mr. Eaton know what to put down?

A. I would ask the patient, he would tell me

in Italian, and I would translate it in English to Mr. Eaton, and Mr. Eaton would write it down.

Q. Do you know that Eaton wrote down what the patient told you?

A. Yes. Mr. Eaton read the statement to me, and I translated it to the patient, and asked him if it was right, and he made two or three corrections.

Q. Made what?

A. Two or three corrections.

Q. Yes.

A. And then he said it was the truth, and right, and he signed it.

Q. And he signed it?

A. Yes, sir.

Q. Did you stay with him until he died?

A. No. I stood there two or three minutes after he had signed the statement and then I left the room.

Q. About what time of the day was it he signed it?

A. Why, the exact time I can't tell. We got there, I should say, about one o'clock, and it took probably a half an hour or so to take the statement.

MR. WESCOTT: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Mr. Buckley, you say it took about a half hour. A witness this morning testified it took about an hour and a quarter.

MR. WESCOTT: I object to that.

MR. McCARTER: Wait until I finish the question.

Q. Don't you think on reflection that it took more than a half an hour?

A. My recollection is that it took about a half an hour.

Q. Did you time it?

A. No, sir.

Q. You had long conversations in Italian with this man, didn't you?

A. Why, what is in the statement here.

Q. Oh, no. You had long conversations in Italian with this man?

A. No. I asked him how he felt. That is before the statement was being taken. And I think I asked him where he was born.

Q. Why did you talk with him in Italian?

A. Why, I wanted to be sure that he understood me, and I understood him.

Q. Of course, you speak and understand English?

A. Yes, sir.

Q. Could he understand you as you spoke English to him?

A. Why, he couldn't speak very good English. He spoke very, very limited English.

Q. Did he understand English?

A. The Prosecutor asked him how he felt, and I don't thiink he could understand the prosecutor.

Q. Did you tell Mr. Eaton what to write in the document?

A. I translated what the patient told me to Mr. Eaton. He wrote it down.

Q. He wrote something down?

A. Yes, sir.

Q. How did the patient sign the paper?

A. Why, he placed the paper on a pad and he held the pad—no, I think Mr. Eaton held the pad and he signed it.

Q. Well, he was laying down?

A. He was laying down; yes, sir.

Q. He didn't sit up?

A. No, sir.

Q. Was he very weak at the time?

A. Well, he seemed to be weak, yes.

Q. Too weak to sit up?

A. Well, I don't know if he was too weak to sit up.

Q. What were you doing during this half hour that you say you were there?

A. Why, I asked him how it happened, and sometimes he would answer very faintly, and I would ask him again, just to make sure that I understood what he said.

Q. Who told you what to ask him?

A. Why, the prosecutor asked me at the start if he cared to make a declaration.

Q. What?

A. If he cared to make a statement, and he said he would make a statement.

Q. Did you translate that to him?

A. Well, I translated that to him. And he said that he would make a statement, he was satisfied to make a statement. And then the prosecutor told me to tell him to tell just how it happened, what trouble they had, and so on, and I did.

Q. Then what occurred?

A. Then he began to tell us what is in the statement.

Q. Then did you simply repeat what he said?

A. Yes. He went on.

Q. Did you have long discussions with him?

A. Sometimes he would speak so low that I would ask him, I would ask him what he meant.

Q. Were you the only one besides the patient who understood Italian in the crowd?

A. I was the only one.

Q. And by the Prosecutor, you mean the Prosecutor of Union County, don't you?

A. Yes.

MR. McCARTER: That is all.

ROBERT L. EATON, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Eaton, you are the clerk of the Grand Jury of the County of Union?

A. I was, sir, until recently.

Q. And you were in January last?

A. Yes, sir.

Q. Will you look at that paper?

A. Yes, sir.

Q. Is your name there as a subscribing witness.

A. It is.

Q. Was the paper signed in your presence?

A. It was.

Q. State under what circumstances?

A. This was a declaration signed by a man, an Italian, who was in the Alexian Brothers Hospital on the 19th of January, 1915.

Q. This hospital is in Elizabeth?

A. Yes, sir.

Q. Who were present when that was signed?

A. Joseph Buckley, an assistant county detective, Dr. Roach and myself.

Q. Mr. Buckley is of what race?

A. He is an Italian.

Q. And in what language was the statement made by the party making it?

A. It was made in Italian to Mr. Buckley, and by him translated to me, and by me transcribed into English.

Q. After it had been transcribed, Mr. Eaton, what was done?

A. The statement was read over by me to Mr.

Buckley, by him translated to the man—to the sick man, and he afterwards signed it.

Q. State whether or not it had been signed as it was written first?

A. It was not. There were, I think, two corrections made, at the dying man's instance and suggestion.

Q. How did he sign it, what was his physical position at the time?

A. He was lying in bed and lying on his back. When he was told to sign his name, I took my legal brief case and laid it on his lap and he was raised up slightly by placing pillows under his back, and it was indicated to him where he was to sign, and he signed his name there.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Have you named all that were there?

A. Yes, sir; at the time of the signing of the declaration.

Q. Who were there at any other time?

A. I came first to the hospital with Mr. Buckley and Prosecutor Stein of Union County. Prosecutor Stein was in the room for a few moments and then went out.

Q. Now you have named all that were there during the performance?

A. I think one of the brothers, one of the nurses, who was an attendant at the hospital came in once or twice and then went out, but he was not present when the signing was done.

Q. Who was that, do you know?

A. I don't know what his name is; no, sir.

Q. You could not understand Italian?

A. No, sir.

Q. And it is true, is it not, Mr. Eaton, that there was a great deal of conversation between the interpreter and the sick man?

A. Yes, there was considerable conversation in as much as when we first went in there Mr. Buckley addressed him and talked with him for a moment or so, and then afterwards, at least, he was told to warn him as to his condition, and he spoke to him in Italian then, and then the only conversation that took place between us, as I understood it, was the questions which were— The statement which he made and the translation of it to me. As to just what language Mr. Buckley used in translating the statement, I don't know.

Q. But you did put down what Buckley told you.

A. I simply put down what Buckley told me; yes, sir.

Q. And of course, you don't know whether what was there was correctly reported to the man when it was supposed to have been read in Italian?

A. Let me understand that question.

Q. And of course, you don't know whether what you had written in English was correctly read to the man in Italian?

A. Oh, no, sir.

Q. Who made the corrections, you?

A. I made the physical corrections on the paper, but the corrections were made—the Italian spoke to Mr. Buckley and Mr. Buckley spoke to me.

Q. How long a time was involved in this ceremony, do you suppose?

A. Well, I suppose from half to three-quarters of an hour.

MR. McCARTER: That is all.

MR. WESCOTT: We offer the paper.

MR. McCARTER: We object to it. We hardly feel that the proof comes up to what we understand to be the law in regard to these statements made in view of death.

THE COURT: Well, what is your ground? What is the law?

MR. McCARTER: I understand, in the first place, that the statement must be entirely a voluntary statement. It must be the declaration of the man. It appears from the witness who testified this morning, the anaesthetician, that a very long conversation occurred between the witness, the

dead man, and the interpreter. They would talk for a minute at a time, and then the interpreter would report something, and that would be put down. Then in addition to that, it seems to me, as I remember the law with regard to these dying declarations, that they must appear to be the voluntary declarations of the man, not drawn out like a dentist pulls a tooth as these seem to have been by this interpreter, and then when he finally got what he wanted, told the other man to put down something. But they must also be made by a man who has the firm conviction that he is on the brink of eternity.

Now, it appears from the testimony of the man who testified before lunch, that this occurred, as it did before lunch, that later on in the afternoon, three or four o'clock in the afternoon, they had some operation, and I cannot imagine what they had that operation for, if this man's condition was not such that they believed he was going to die. Because of the fact that the declaration does not possess the voluntary characteristic, which it should, the frank open statement, but dragged out by the teeth, so to speak, by an interpreter who was trying his best to get what he wanted, and because it does not appear that the man had the necessary consciousness of death, we object to the introduction of the statement.

THE COURT: I will hear what you have to say on the last point.

MR. WESCOTT: The rule is that any statement voluntarily made under the conviction of impending dissolution, makes a valid piece of evidence. The proof here is that this man was fatally wounded. The proof is that shortly after receiving this fatal wound he died from that wound. The proof

further is that while he was in this condition, a physician, who knew better, communicated that fact to him, whereupon he said that he wished to make a statement, and he made it. Now, when my distinguished friend characterized this as teeth pulling, he is wrong, because here is a foreigner. He was talking to a foreigner, but that language had to be translated into English.

THE COURT: Well, Mr. Attorney General, I do not have any difficulty on that point. The only trouble I have is whether there is sufficient proof now made that this declaration was made by a man with knowledging of impending death.

MR. WESCOTT: He said so.

THE COURT: That is what I want to know; does he say so?

MR. WESCOTT: Oh, yes; he says so himself.

THE COURT: Where?

MR. WESCOTT: In the declaration.

THE COURT: That is not enough.

MR. WESCOTT: And he also said to one of the witnesses, the Italian witness who was on the stand here, when the doctor told the Italian witness that this man was dying, that he could not live, and the Italian communicated it to the dying man, his response to it was, another besides the doctor, another other than the doctor knows that, or others than the doctor know that.

MR. McCARTER: "It aint only the doctor that knows that."

MR. WESCOTT: It aint only the doctor that knows that. That is equivalent, of course, to sayiing that he knew himself that he was dying, that he was going to die. I have myself no doubt in the world about the validity of this statement.

Then the statement itself is most conclusive evidence that the man knew that he was going to die. I think it would be a great mistake to rule this evidence out. The force of what the statement on its face shows, the fact that the man was wounded, and that shortly after died, that there was an intelligent physician there told him he was going to die, and he said, "Others know that than the doctor," and therefore he wishes to make a statement, of what he knew about this matter. How can you make it any stronger? Suppose he said before a dozen witnesses, "I know I am going to die?" He said what was equivalent to that to a witness, a man of his own blood, and he must have meant what he said. It can not be assumed that he did not. Therefore, it is evidence of a dying statement. Your Honor ought not to rule this out, if you will pardon me for making the suggestion, unless it is clear in your Honor's mind that you ought to do it.

THE COURT: This is dealt with in the Adomi case, is it not?

MR. WESCOTT: Yes. If your Honor has the slightest doubt about it, I beg you to defer your final determination until you look into the decisions. I am sure this is good evidence.

MR. McCARTER: I just want to correct one misapprehension that counsel has labored under. He said that the witness was told by a doctor that he was in danger of dying. To be sure that doctor this morning testified to that, but the two witnesses who have testified since said that he was not there at all, or rather, they have said that the only people who were there—

MR. COAN: Oh, no.

MR. McCARTER: Who do you mean, the doc-

tor who testified this morning? Look at the testimony and see if either one of your witnesses this afternoon said he was there. One of them left out the Prosecutor.

THE COURT: I want to interrupt you. It is not necessary to decide this question now, and I see that counsel on neither side are prepared with any authorities. I will hold this matter until you have an opportunity to look at it. My impression is that a confession of this kind, or rather a dying declaration, must be made with knowledge of impending death, and that is that the person must be satisfied that there is no hope of recovery. If there is any lingering hope of recovery, it is not a dying declaration. I understand that to be the law. I have not all this evidence here, but I understand it is to be transcribed for us, so that I will have that before me and have an opportunity to look at it, and counsel at the same time can look at it.

JOSEPH WAMTOCH, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Doctor, you are a practicing physician of the Borough of Roosevelt?

A. I am.

Q. And you were in January last?

A. I was.

Q. Do you remember on the 19th of January being at the barber shop of Ohlott?

A. I do.

Q. Did you see there Olesandro Tessitore?

A. I don't remember the name. I have a list of them. I only attended to eight of the men that were injured.

Q. By referring to your list can you tell if you saw this man?

A. Yes, sir. I did not see him.

Q. Who else was there? What other physicians?

A. Dr. Jacoby.

Q. Where is Dr. Jacoby now?

A. Dead.

Q. Were there other patients there besides those whom you attended?

MR. STRICKER: I object. I submit that is not relevant to this issue.

THE COURT: There cannot be any harm in telling whether there were other patients there. That is not very material. Proceed.

A. There were others there; yes, sir.

MR. COAN: That is all, doctor.

THE COURT: Any cross examination?

MR. McCARTER: No.

ALEXANDER POKOL, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through Interpreter Stephen F. Somogyi.)

Q. On the 19th of January last where were you at eight o'clock in the morning?

A. I was at Williams & Clark.

Q. At the factory, or where?

A. On the track.

Q. How many others were there?

A. There were many others there.

Q. Did you see the train come in?

A. Yes.

Q. What happened then?

A. When the train came in, I was standing on the side of it in such a way that when it came in it prevented me from seeing the factory.

Q. Did you see anybody else there besides the strikers?

A. No.

Q. Was there any shooting?

MR. STRICKER: I object on the ground it is a leading question. He asked whether there was any shooting there.

THE COURT: What is the objection to it?

MR. STRICKER: I submit it is a leading question.

THE COURT: I will allow the question. Proceed.

A. Yes.

Q. Who did the shooting?

A. The ones who were watching the factory.

Q. Where were they?

A. They came on to the track from the factory.

Q. Did you see them come out?

A. Why not? I did.

Q. Where did they come from?

A. From the factory.

Q. What part of the factory?

A. From the office.

Q. How many of them were there?

A. I don't know exactly.

Q. About how many?

A. About eighteen.

Q. State whether or not they came out together?

A. They followed each other.

Q. What if anything did they have in their hand?

A. Guns, weapons.

Q. What did you see them do?

A. I saw one holding in one hand a gun. He shot one, and the others followed shooting.

Q. What, if anything, did he say?

A. He yelled, "shoot." I don't know what it means.

Q. What did you do then?

A. I ran into the water.

Q. And what did the others who were with you do?

A. They also ran, whichever direction they had a chance to run.

Q. Did you see Alesandro Tessitore there?

A. I don't know the name, I don't know him.

Q. Did you see the Italian man who was shot and died there?

MR. STRICKER: I objection on the ground no Italian man died there.

THE COURT: I will allow the question. Proceed.

Mr Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. No, I did not. I ran away.
Q. Did you see anybody shot?
A. Kalman Batyi.
Q. Where were you then?
A. I was there with them.
Q. Who, if anybody, was in front of you?
A. Kalman was standing in front of me.
Q. State whether or not if any one was behind the railroad station?
A. There were up in Cartaret.
Q. No. The station down by the Williams & Clark plant.
A. Yes, there were. There were many of us there.
Q. Did you carry anybody away from there?
A. I did not.
Q. Where were the men who were shot taken?
MR. STRICKER: I object to that on the ground that it is not relevant to this issue where other men were taken who were shot.

THE COURT: I will allow the question.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. Took them to Cartaret to the barber shop.
Q. Who took them to the barber shop?

A. I don't know the one.

Q. Did you find anything around there after the shooting?

A. A couple of empty shells, and a loaded shell, or cartridge from a revolver.

Q. What did you do with them?

A. A policeman took them away from me as soon as I picked them up.

Q. What policeman?

A. Joe.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Were you on strike?

A. Yes.

Q. Did you have a club with you that morning?

A. I did not.

Q. Nobody had any club with the strikers that morning, did they?

A. I did not see any.

Q. You did not see any with stones in their hands either, did you?

A. Not there, I did not.

Q. Where did you see them with stones in their hands?

A. I said that I did not see any with any at the strike.

Q. Were you at Van Ness's Hall the night before the shooting?

A. I was.

Q. And there was a meeting held of the strikers, wasn't there?

MR. WESCOTT: I object to that.

THE COURT: How is that competent?

MR. STRICKER: I propose to show by this witness, if possible, that this man attended the meeting at Van Ness's Hall the night before the strike, that he was one of the crowd who indulged in the passing of a resolution to come to this very place and make trouble the following day.

THE COURT: He admits he was there.

MR. STRICKER: But I want to go further than that. I want to show that he was there for an unlawful purpose.

THE COURT: I do not think this is competent unless you can show that he committed an unlawful act after he got there.

MR. STRICKER: I would like to lay a foundation. I say going there for an unlawful purpose is in itself illegal.

THE COURT: You prove the fact first that he did some unlawful thing.

Q. You were one of a crowd of three or four hundred men, weren't you?

A. I was among them.

Q. And you went down there to stop the train, didn't you?

A. I did not.

Q. And if there were any scabs on the train, you and your associates were going to take the people off?

A. Well, I just came to America. I didn't even know what a strike was.

Q. Well, you went on strikes though, didn't you?

A. I had to, because I wasn't permitted to work.

Q. Who stopped you from working?

MR. WESCOTT: That is objected to.

THE COURT: I do not see, Mr. Stricker, how this is at all competent. You may ask if these men were there that morning in an unlawful gathering. That does not justify killing them.

MR. STRICKER: Certainly not. But if I can show that this witness is interested in this case to the extent that he himself was one of the—not only one of the unlawful gathering, but one of the leaders of that unlawful gathering, I submit that becomes competent.

THE COURT: Ask your questions along that line, if you choose.

MR. STRICKER: I put a question—he said he was prevented from working, and I asked him by whom, and then an objection came.

THE COURT: I will allow that.

Q. Who prevented you from going to work?

A. We went to work on Monday morning, and the Italians wouldn't let anybody go in there.

Q. What Italians?

MR. WESCOTT: I object.

THE COURT: Haven't you gone far enough now in order to show he was not allowed to go in?

MR. STRICKER: I would like to show that somebody connected with this particular transaction, if an Italian—

THE COURT: Ask him the questions which you chose to ask along that line. You asked him why he was not allowed to go to work; he told us that some Italian stopped him.

Q. Were these Italian strikers stopped you?

MR. WESCOTT: I object.

THE COURT: I will allow that question.

MR. WESCOTT: We are going now away back into past history. We do not want to go there, because if we do, it will take a month to try this case.

THE COURT: I will allow the question.

A. Yes, they were working there.

Q. When you got there that morning, where did you stop, at what point?

A. Right by the track.

Q. Opposite the office?

A. Yes, opposite the gate house.

Q. There was no shooting there until the train came in?

A. Not then, no. I didn't hear any.

Q. Well, you didn't see any either, did you?

A. No, not then.

Q. Then the train came in and stopped right in front of you?

A. Yes.

Q. Did you move, or did you stay where you were?

A. I went home.

Q. Do I understand you to say that you stopped opposite the gate house, and that right after the train came in that you went home?

A. I went home at once. I didn't know what they wanted.

Q. Do you understand that chart?

A. I don't see Liebig's, no.

MIKE LAKATOS, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through Interpreter Stephen F. Somogyi.)

Q. Mike, do you know where the Williams & Clark station is?

A. Yes, I do.

Q. State whether or not you were down there on the morning of January 19th last?

A. I was, yes.

Q. There when the train came in around eight o'clock?

A. Eight or a little after eight, I am not sure.

Q. Where did the train stop first?

A. A little away from Williams & Clark. Not at the station where it should have stopped.

Q. Where were you Mike?

A. I was about 40 feet away from the place where this trouble occurred.

Q. Who were with you?

A. I can't give their names. There were several men.

Q. How many?

A. I don't know, several.

Q. Well, as the train stopped at this place before it got to the station, what happened?

A. When I went over to the train it had stopped. I don't know.

Q. Well, was there any shooting there?

A. Yes. After I got there.

Q. Who did the shooting?

A. I can't say, because I could not recognize them.

Q. Well, where were the men who did the shooting?

A. They were on the side of the track towards the Williams & Clark factory.

Q. Where had they come from?

MR. STRICKER: If he knows.

A. From the factory.

Q. Did you see them come from the factory?

A. Yes, I did.

Q. Where did they come out?

A. They came from the yard of the factory. I don't know what place.

Q. And as they were coming out, what took place?

A. When they came out they were standing in a bunch, and after the shooting, I don't know who did the shooting.

Q. Did the shooting take place while they were standing in a bunch?

A. Yes, when the people who were strikers were standing in a bunch, the Williams & Clark men were on one side of the track, and the others were on the other side of the track. And the shooting took place from the Williams & Clark side towards the other.

Q. The men who were on the Williams & Clark side, were they in a bunch, when the shooting took place?

A. Well, I can't say that they were standing one right close to the other, but they were in one bunch.

Q. How many shots were fired?

A. I can't say.

Q. Well, how were they fired, Mike? Tell us how they were fired?

A. When they were shooting the people were running towards the swamp, which is on that side of the track.

Q. Where did you go?

A. I ran up to the town.

Q. Did you see any fire arms?

A. I saw them have weapons, yes.

Q. Who had the weapons?

A. I can't say. I did not see any workmen have any.

Q. Well, who were the ones that did have any?

A. Simply the men from Williams & Clark. The ones who were on that side.

Q. What kind of weapons did they have?

A. I cannot give you the size of the weapons, but I saw them have revolvers and also guns.

Q. Did you see anybody shot?

A. Yes. Italian who died. I took him up to the drug store, or to the barber shop. I don't know which it is.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Did you see any railroad ties on the tracks that morning?

A. At Liebig's; yes, I did.

Q. Did you see any railroad ties at the Williams & Clark plant that morning.

A. I did not see any there. I did at Liebig's.

Q. Did you see a pole stuck into thhe tracks near thhe Williams & Clark station that day?

A. I didn't see anything at all when I went there.

Q. Everything was nice and quiet?

A. I did not see anything else there except that what I have related.

Q. Everything was quiet. You didn't hear anything?

A. Yes. I don't know anything else.

Q. And none of the men were shouting.

A. I don't know anything.

Q. And none of them had clubs?

A. I saw some have laths, some three or four men had a lath about the width of my two fingers, at Liebig.

Q. Keep away from Liebig's, and get up to Williams & Clark's, and state whether or not you saw anybody with clubs at the time when you arrived there?

A. I did not see anything.

Q. And you did not see any of them with stones either, did you?

A. I can't say, because there aren't many stones in that vicinity.

Q. Well, are there any stones in another vicinity around there?

A. Well, I don't know whether or not they carried any, but I didn't see any.

Q. Did you see any with bricks, or brickbats?

A. I did not see them. I can't say.

Q. Or with pieces of iron?

A. No.

Q. You did not see anybody get on to the steps of the locomotive of that train either, did you?

A. Yes, I saw people among the workmen who were there, get up on the train and go to Carteret.

Q. You didn't see anybody get on the train for the purpose of looking for strikebreakers or scabs, did you?

A. I did not see that, because I was ahead of the rest of them.

Q. And you can't identify one single person who fired a shot, can you?

A. Not at all.

Q. And that being the case, how can you say that it was the deputies, or people from Williams & Clark, who did the shooting?

A. I know that the shooting was from that direction. I was standing quite a distance away at the time, and I know there was no shooting taking place on this side.

Q. How far away were you?

A. About 35 or 40 feet away.

Q. That is not any further than across this room, is it?

A. I can't say what the distance across the room is. About forty feet away.

Q. You say you were at Liebig's that morning an hour before?

A. Yes, I was in the morning.

Q. Were you there when the train was stopped by the so-called strikers?

A. Yes, at Liebig.

Q. And the same people who stopped the train at 7 o'clock were at the Williams & Clark plant at 8, is not that correct?

A. Whether all of them were on the same bunch, I can't say.

Q. But most of them were, weren't they?

A. Yes, sir. They were.

MR. STRICKER: That is all.

RE-DIRECT EXAMINATION:

By MR. COAN:

MR. COAN: I would like to ask the witness a few questions that I omitted on direct examination.

Q. Did you attend Tessitore's funeral?

A. No, I was not.

MR. COAN: That is all.

CHARLES OHLOTT, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. State whether or not you are the proprietor of the barber shop to which the injured were taken on January 19th last?

A. I am, sir.

Q. And where were you on that morning?

A. I was down at the—that is between the A. A. C. works and the Carteret station.

Q. Well, when you say the A. A. C. works, what do you mean by that?

A. The Williams & Clark place.

Q. How far were you from the Williams & Clark station?

A. I should judge about six or seven hundred feet.

Q. Up towards the Carteret station?

A. Yes.

Q. Tell us what you saw there?

A. Well, as the 8.06 come in, I saw a crowd of men down by the Williams & Clark station, and seen a little red flag, or something of that sort on the track. And as the train pulled out, there was a crowd of men coming from the office of the Williams & Clark plant out, and there is a switch there. From that switch on they began to run, running towards the Williams & Clark station, and as they run, they shot.

Q. Who shot?

A. These deputies did, or whatever they were.

Q. Where had they come from?

A. From Williams & Clark.
Q. What part did they come out?
A. Out of the office.
Q. Can you point out the office on this map here, and the switch that you speak of? Come down and look at the map.
A. Here is the office, and here is that switch. (Indicating on map.)
Q. You say from the time they got at that switch they started to run?
A. Yes, sir.
Q. And which way did they go?
A. Running this way. (Indicating on map.)
Q. Where were they when they started to shoot?
A. They were at that switch.
MR. STRICKER: Will you kindly indicate that on the map. Put a "B" on there.
Q. Where did they go then?
A. Then they run across towards the station.
Q. And what were they doing as they ran?
A. Shooting.
Q. State whether or not there was much or little shooting?
A. There was quite some shooting.
Q. Did anybody fall?
A. Yes, sir.
Q. Were they picked up?
A. Yes, sir.
Q. Where were those who fell?
A. Well, they were on the other side of the track.
Q. That is on the westerly side of the track? On the side opposite the factory?
A. Yes.
Q. Did you know Tessitore?

A. I don't know the man.
Q. Did you know him?
A. I did not.
Q. Did you see him that day?
A. Yes, sir.
Q. Where did you see him?
A. See him at my place.
Q. And where did he come from?
A. They carried him up the track.
Q. How many other men were at your place wounded?
A. Nineteen.
Q. Where were they taken to?
MR. McCARTER: I object as utterly immaterial.
THE COURT: Confine it to this case. This one, where was he taken?
MR. McCARTER: Yes.
Q. Where was Tessitore taken to?
A. To the hospital.
Q. What hospital?
A. That I don't know.
Q. Well, where was the hospital?
A. Elizabeth.
Q. Did you ever see Tessitore again?
A. No, sir.
MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. You have given an opinion on this case, haven't you, before today?

A. Not that I know.

Q. Haven't you expressed your opinion?

A. Before the Grand Jury.

Q. No. Since you have testified before the Grand Jury?

A. I don't remember.

Q. Well, haven't you stated that it was—

THE COURT: To whom?

MR. WESCOTT: Name the person and the place and the time.

THE COURT: He is about to do that. Proceed.

Q. You say you were 700 feet away from there?

A. About that.

Q. Well, just show us on the map where you were?

A. What is this supposed to be?

Q. You ought to know. You have testified from the map.

A. I don't know what this represents.

Q. Well, where were you?

A. I was about here. (Indicating.)

Q. Out in the swamp?

A. This is not swamp.

Q. Oh, yes, it is.

MR. WESCOTT: Don't dispute with the witness.

A. This is not swamp.

Q. What is it?

THE COURT: Ask him if he understands the map.

A. This is a field here.

Q. Do you understand that map?

A. No, I am not an expert on it. That is why I asked what this is, so I know where I am at.

Q. This is the Williams & Clark's office?

A. Yes, sir.

Q. Here is where you saw the men first to run?

A. Yes, sir.

Q. Now, at what point were you when you saw that?

A. I was about here then (indicating), not on the track.

Q. Were you in your barber shop?

A. No, sir.

Q. What were you doing on the track?

A. I represent the New Brunswick Times.

Q. You came over to report this?

A. Yes, sir.

Q. Got there a little late, didn't you?

A. No. I got there in time.

Q. You saw the whole thing, didn't you?

A. Saw practically all of it.

Q. Which part of it did you see?

A. I saw when the men come out.

Q. Where did these men come out from?

A. Come from the gate.

Q. Which gate?

A. Williams & Clark.

Q. Will you indicate it on the map there and show us what your idea is about the gate?

A. Here (indicating).

Q. Right there?

A. Yes, sir.

MR. STRICKER: Supposing we mark that C.

Q. How many men came out of that gate?

A. Between 25 and 30.
Q. Well, which is it?
A. I don't know. I didn't count them.
Q. Were they armed?
A. Yes, sir.
Q. With what?
A. Some had large guns and some had revolvers.
Q. How many had revolvers and how many had large guns?
A. That I can't answer. I don't know.
Q. Well, you were a reporter.
A. Well, I wasn't close enough to count them, how many had revolvers.
Q. I know, but you were there for the purpose of seeing the whole thing.
A. Yes, sir.
Q. Didn't you?
A. Yes, sir.
Q. How did you know that there was going to be any demonstration there that morning?
A. I didn't know.
Q. What attracted you to that place?
A. I was there every day.
Q. You can't tell us whether the number of men who came out of that plant was fifteen, twenty, thirty or forty, can you?
A. Was between 25 and 30.
Q. Why do you say it was between 25 and 30 if you didn't count them?
A. Well, I didn't count them, whether I counted 26 or 28.
Q. Did you count those men?
A. Counted between 25 and 30.
Q. Did you count those men?
A. Counted some of them.
Q. How many did you count?

A. I don't know whether they were all deputies, or whether they were officials of the company or what they were.

Q. Then you saw some men there that you assume now to be 25 or 30, is that correct?

A. Yes, sir.

Q. And whether they were deputies or not, you can't tell can you?

A. Yes, sir.

Q. You can tell?

A. No, I cannot.

Q. You cannot tell whether five had revolvers and 25 guns, or the other way, can you?

A. Oh, I know they didn't have all guns.

Q. How were they divided?

A. That I don't know.

Q. Well, can't you even tell whether it was fifty fifty?

A. No, I cannot.

Q. Did you see any of the so-called strikers there that day?

A. Yes, sir.

Q. Any of them have clubs?

A. Yes, sir.

Q. How many of them had clubs?

A. I seen one or two.

Q. How many strikers did you see altogether there?

A. Oh, two or three hundred.

Q. And out of the whole two or three hundred, all you saw was two with clubs?

A. Yes, sir.

Q. Did you see any of them with sticks?

A. A stick is a club.

Q. That is synonymous with you, is it?

A. Yes.

Q. So we will not split hairs on that. Did you see anybody with stones?

A. No, sir.

Q. Pieces of iron?

A. No, sir.

Q. Did you see any of them with fire arms?

A. No, sir.

Q. You didn't see any of the strikers shoot, did you?

A. No, sir.

Q. And are you prepared to say now on your oath that the men that you saw shoot that morning might not have been strikers?

A. I don't understand that.

Q. (Repeated by stenographer.)

A. They were not strikers.

Q. How do you know?

A. I know they were not.

Q. Well, how do you know?

A. I know very near every one that is a working man in that works.

Q. Yes, but you were seven or eight hundred feet away, weren't you?

A. Yes.

Q. You haven't undertaken to identify these 25 or 30 people, have you?

A. No, sir.

Q. How can you say now but what one of the men that you saw shooting might have been a stricker?

A. I wouldn't say that.

Q. Why not?

A. I don't know that.

Q. Are you positive about it the other way?

A. What way?

Q. Why, that they were not?

A. No. I don't think I would be positive about

it.

Q. Isn't it a fact that you were in your barber shop when this thing first started up?

A. What was that?

Q. Wasn't it a fact that you were in your barber shop when this affair first started?

A. No, sir.

Q. How far is your barber shop from the Williams & Clark station?

A. I don't know, it is right opposite the railroad station at Carteret.

Q. You could not identify one single man that you saw in that bunch, could you?

A. I did then.

Q. Could you do it now?

A. I don't think so.

Q. Why not?

A. Because it is quite some time since I have saw the men.

Q. How many of these men did you undertake to identify?

A. Three or four.

Q. And don't you know that the men that you undertook to identify were not there at all?

A. Those that I identified, they were there.

Q. Don't you know that the men that you undertook to identify were not there at all on that day?

A. I wouldn't take an oath.

Q. You say you would not take an oath to that?

A. No, sir.

MR. STRICKER: That is all.

MR. COAN: That is all.

ALFRED CAMMANN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR FLORANCE:

Q. Where do you live, Mr. Mammann?
A. Newark.
Q. What is your business?
A. Fireman
Q. Where?
A. Central Railroad.
Q. I call your attention to the 19th of January, 1915. Were you a fireman on that date?
A. Yes, sir.
Q. On what train?
A. 953.
Q. Where does that train run from?
A. From Jersey City to Chrome.
Q. Does that train stop at Williams & Clark?
A. On a flag.
Q. What time is that train due at Williams & Clark?
A. Why, it is due there at 8 o'clock.
Q. Do you remember that particular morning of the 19th of January?
A. Yes, sir.
Q. Did the train stop there that morning?
A. Yes, sir.
Q. State to the Court and jury what you remember of the stopping of that train that morning?
A. Why some one was waving a flag, or a piece of red cloth, and another party was waving something white.

Q. Did you notice who was waving the piece of cloth?

A. No, I don't know who it was.

Q. When was your attention first called to that waving of the red and white?

A. Why, as we came around the curve just before you get to Williams & Clark.

Q. After you saw the waving of that red and white, what did you do?

A. Why, the engineer blew the whistle. There were several men on the track, and then the engineer shouted for them to get off, and when they didn't get off, he stopped.

Q. Then what happened?

A. Why, some men come running along the train and wanted to know if there were any scabs on the train, and when they were told there wasn't, some of them boarded the train, and immediately afterwards they got off and said all right, let them go.

Q. Then what happened?

A. We proceeded.

Q. What side of the engine were you on?

A. Left side.

Q. And you say the left side coming to the Williams & Clark station; is that the Williams & Clark side of the train?

A. The side the fertilizer works are on.

Q. What happened to the obstructions on the track?

A. Some one removed them.

Q. Then what did the train do?

A. Proceeded.

Q. You were on the left side then of the train as it started?

A. At that time.

Q. What did you observe in front of you?

A. Something similar in size to a railroad tie.
Q. Where?
A. Located a few feet east of the station.
Q. Then what happened then?
A. Why, I heard somebody shooting.
Q. Where?
A. Came from the left side.
Q. What did you see on the left side?
A. Nothing but men.
Q. You saw men?
A. Yes.
Q. And you heard shooting?
A. I heard shooting.
Q. When did you first see the men?
A. Why, they were all over when we came in there.
Q. When did you first see the men?
A. As we came around the curve before we came to the Williams & Clark.
Q. I refer now to the men on the left side that you speak of, when did you first observe those?
A. Why, it was after we stopped.
Q. Where did you first see those men?
A. They were standing a few feet away from the tracks.
Q. Did you see those men march up towards the track?
A. I did not.
Q. What men did you see shoot?

MR. STRICKER: I object to that. He did not say he saw any men shoot.

Q. Did you see any men shoot?
A. Yes, sir.
Q. Where were the men who shot?

MR. STRICKER: I object to that. He does not say he saw any men shoot.

THE COURT: He has said that two or three times. I overrule the objection.

MR. STRICKER: I did not understand him to say men.

THE COURT: Answer the question.

A. The men I saw shoot were on the left hand side of the track on the side with the fertilizer works.

Q. How far from the track were those men when you saw them shoot?

A. Why, they were only a few feet away.

Q. Away from where?

A. The track.

Q. And that was the first time that you observed those men?

A. No. I saw them standing in a group previous to that.

Q. Where?

A. Just around the same place where I saw them shoot from.

Q. Is that the first time that you noticed those men?

A. It was.

Q. How were they armed?

A. Some had revolvers and others clubs, and some had, I don't know whether you would call them guns, they were about that long (indicating).

Q. How many of them had guns?

A. I couldn't say.

Q. How many were in that group that you saw?

A. Probably 25 or 30.

Q. Were they all armed?

A. The majority of them were, either with clubs or guns and revolvers.

Q. How did they shoot?

A. What do you mean?

Q. Did they shoot in the air?
A. Well, the guns wasn't practically—wasn't up in the air.
Q. How was it?
A. I saw some of them pointed towards the men.
Q. Towards what men?
A. Some men on the other side of the track.
Q. Did you see any shots fired?
A. I saw the smoke and heard the report.
Q. Did you see any men fall?
A. No, sir. I saw one man creeping through the water.
Q. Tell us about that?
A. He was creeping through some water on his hands and knees.
Q. Where was that, where was he?
A. Right by the station.
Q. To the Williams & Clark side of the track or the other side?
A. The other side.
Q. What was he doing? You saw him in the water?
A. I saw him, he was evidently trying to get away.
Q. How was he running?
A. He wasn't running; he was creeping on his hands and knees.
Q. Was that after you saw the shot fired?
A. Yes, sir.
Q. Did you see any one lying along the side of the track?
A. Yes, sir.
Q. Tell us about that?
A. Why, two men had hold of another one on each side of him, and as they let go of him I saw him roll down toward the water.

Q. Then what happened?

A. Well, we passed them, and that was the last I saw of him. He was still laying there.

MR. FLORANCE: Cross examine.

THE COURT: One minute.

By THE COURT:

Q. Your train stopped before you reached the station, did it?

A. Yes, sir.

Q. Did it stop at the station or run on through?

A. I don't just remember whether we made a second stop or not.

Q. Well, the shooting that you have described, was that before your engine reached the station, or after?

A. It started before. As soon as the train started, as near as I can remember, the shooting commenced.

THE COURT: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. How many men do you suppose were on the track waving, or preventing the train from progressing?

A. Well, in the neighborhood of 25 or 30. They seemed to be in that lot.

Q. Were some of them on the left side of the track and some on the right side, too?

A. They were all over, both sides, and on the track.

Q. And they were such a crowd there that your train was compelled to stop?

A. Yes, sir.

Q. Did you see this obstruction, this tie?

A. I did.

Q. Did you see a red flag?

A. I did.

Q. Standing up attached to a piece of wood or a stick?

A. I won't say what it was attached to. I saw something red.

Q. It was a jersey, wasn't it? What kind of a flag was this?

A. Piece of red cloth is all I know. Something red.

Q. It was not a part of the railroad curtain, was it? It was a kind of a rough piece of red.

A. I can't say to that. It was some red.

Q. How near to this obstruction did your locomotive stop?

A. Why, as near as I can judge, about 500 feet.

Q. Away from the obstruction?

A. Yes, sir.

Q. How far was the obstruction from the little station?

A. Why, about 50 feet, I think.

Q. How many strikers did there seem to be around there, scattered all over?

A. Why, between two and three hundred.

Q. Where was it that the man came and said—getting on the train, and wanted to see if there were some scabs on it?

A. That was after we had stopped.

Q. They stopped the train for that purpose, did they?

A. I don't know.

Q. Well, they said they wanted to see if there were any scabs on it?

A. That is what they asked.

Q. Did they go in the train?

A. I saw them get on the platform. I can't say where they went.

Q. Which side, left or right, or both?

A. Left side. I didn't see what happened on the right side there.

Q. They got on the train on the Williams & Clark side?

A. Yes, sir.

Q. And it was one of those men that was on the Williams & Clark side that said—that you overheard say, see if there are any scabs on it.

A. He asked the brakeman if there were any scabs on the train.

Q. Then the obstruction was removed after they satisfied themselves there were no scabs, is that right?

A. Yes, sir.

Q. Did you observe whether these strikers had any clubs?

A. Some of them did.

Q. What kind of clubs?

A. Why, they were rough pieces of wood.

Q. Were they brandishing them?

A. No. They simply were carrying them at their sides when I saw them.

Q. Were they making any noise?

A. No. Some of them were hollering. I couldn't make out what they said. I couldn't understand them.

Q. It was quite a boisterous crowd there, wasn't it?

A. It was.

Q. In answer to a question by Justice Bergen I understood you to say that you could not remember whether the train stopped again at the station or not?

A. I don't remember now.

Q. And as you went away the strikers were on both sides of your train?

A. Yes, sir.

Q. And the only ones that you saw were on that side, is that right?

A. No. I stepped over to the right side. That is where I saw the man lying in the ditch.

Q. That is after your train had gotten under way again?

A. After it started; yes, sir.

Q. Of this group of 25 or 30 men you said the majority were armed with clubs, revolvers, or guns. Can you undertake to say how many had clubs?

A. I cannot.

Q. How many had revolvers?

A. No, sir.

Q. How many had guns?

A. No, sir.

Q. Of course, you can't identify who any of them were?

A. There was only one that I thought I could tell. I am not positive about that.

Q. You don't know who any of the others were, leaving out that one?

A. I would not know any of the rest, I am sure.

Q. You said you thought you could identify one?

A. Yes, sir.

Q. Did you see the one whom you thought you could identify, shoot?

A. No, sir.

Q. And did the one whom you thought you could identify have a gun in his hand?

A. No, sir.

Q. What did he have?

A. A club.

MR. McCARTER: That is all.

JAMES F. RYDER, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. FLORANCE:

Q. Where do you live, Mr. Ryder?
A. Elizabeth.
Q. What is your business?
A. Trainman for the Central Railroad.
Q. I call your attention to the 19th of January, 1915. Were you a trainman on that day?
A. Yes, sir.
Q. On what train?
A. Train 955—953, rather.
Q. That train runs from where to where?
A. From Jersey City to Carteret or Chrome.
Q. Was that train at the Williams & Clark station that morning?
A. We stopped there. Stopped before we got there.
Q. You stopped before you got there?
A. Yes, sir.
Q. Why did you stop?
A. Held up.
Q. By what?
A. Held up by obstruction.
Q. What was that obstruction?
A. Looked to be an old log, or something there.
Q. Were there any people around there?
A. Oh, yes; there were four or five hundred people around.
Q. Where were they?
A. Scattered all through the track, and up around as far as Carteret station, pretty near.
Q. And you saw this log on the track?
A. Yes, sir.

Q. The train then stopped?

A. I stopped, and went ahead, and about that time there was ten men came along there and wanted to know if we had any strikebreakers on there. And then a bunch more went up and started climbing on the train.

Q. What did you say to them?

A. I told them we didn't have any.

Q. Then what happened?

A. Then about that time a bunch of fellows come along there with guns. I was told they were deputies, but I don't know whether they were or not.

MR. STRICKER: I move that be stricken out.

THE COURT: Strike that out.

Q. You say that some men got on the train, and then they asked you whether there were any strikebreakers on it?

A. Yes, sir.

Q. Then what happened?

A. These men come running out of the factory, Williams & Clark factory.

Q. What men came running out of the factory?

A. I don't know what they were; they told me they were deputies.

MR. STRICKER: I move that be stricken out.

THE COURT: He said they told him.

MR. STRICKER: I don't understand him to mean the men who came out.

THE WITNESS: No, the men who came out didn't tell me they were deputies. That was a rumor went around there.

THE COURT: Strike out that part of the statement in which the witness said they were deputies.

Q. You saw men coming out from the factory?

A. Yes, sir.

Q. How many men did you see come out?

A. Oh, about thirty or forty it looked to be.

Q. Where did they come from?

A. Out of the factory gate.

Q. Where is the factory gate?

A. In front of that Williams & Clark station.

Q. Did the men who come out have anything in their hands?

A. I seen men with clubs and guns and revolvers.

Q. Were they all armed?

A. I couldn't say they were all armed. I seen some of them.

Q. How many guns did you see?

A. Oh, I seen about two guns, two of those riot guns, and a bunch of revolvers.

Q. When did you first see these men come out of the gate of Williams & Clark? Where were you then?

A. I was standing there ahead of my train, at the head of the engine. I went up ahead to see what that obstruction was there. To get it cleared off the track so the train could proceed.

Q. Where was the train located relative to the Williams & Clark station?

A. Oh, about 300 feet east of the crossover, that leaves that siding runs along the factory from the station. About 300 feet east of the station, the Williams & Clark station.

Q. And you walked ahead of your train to see the obstruction?

A. To see what was going on and get that obstruction off, or see what was the trouble, what we were held up for.

Q. When did you first observe these men coming from the Williams & Clark station?

A. Just about the time these fellows held me up there.

Q. What did they do?

A. They held me up and wanted to know if we had any strikebreakers on there.

Q. You told them there were none on?

A. Told them we had none on.

Q. What did they do with the obstruction?

A. Somebody kicked it off. I don't know who it was. Then I hollered to the engineer to go ahead, and these fellows were out there shooting.

Q. Did he go ahead?

A. He went ahead and I jumped up in the cab. We pulled up and made a regular station stop at Williams & Clark station.

Q. You say you saw these men come out of the Williams & Clark office, or gate?

A. Yes, sir.

Q. How did they approach?

A. On a run.

Q. They were on a run?

A. Yes, sir.

Q. Did they come together?

A. Scattered.

Q. How many of them were there?

A. About thirty or forty.

Q. Did they come out of the gate together?

A. All come out in a bunch.

Q. What did they do?

A. Scattered as soon as they come out. Started hollering and yelling and chasing the strikers out of there.

Q. They started to holler and yell themselves?

A. Clubbing and shooting.

Q. How did they shoot?

A. Well, I didn't take particular notice how they shot.

Q. Shoot up in the air?

A. Held up their guns and shot, looked to me right direct at the strikers.

Q. Did they keep on shooting as they ran toward the station?

A. Yes, they kept on shooting.

Q. What did the strikers do?

A. Run.

Q. How?

A. They scattered and run all around through the swamps and every direction they could get out of the way. Some went up the hill, and some went up the side track there, and some went through the swamp.

Q. What did the men do who had the guns, keep on shooting?

A. Kept on shooting.

Q. What did they do?

A. Kept running after them. Until we pulled out.

Q. Did they shoot?

MR. McCARTER: Don't lead.

A. We pulled out when the shooting began. I didn't see.

Q. As you made the stop at the station what did these men with the guns do?

A. Why, the men with the guns were out when we stopped the first time. When we stopped at the station I was up in the cab of the engine. I couldn't see what they were doing then.

Q. What were the strikers doing?

A. The strikers were scattered, running.

Q. Did you see any men fall?

A. Yes, I seen them fall.

Q. Where?

A. Some alongside of the station there, and one in the swamp.

Q. Did you see any man, any one man shot?
A. I seen a striker shot, yes.
Q. Did you see the man that shot him?
A. I seen a man standing over him, with a gun.
Q. How close was he to the man?
A. Right within a foot of him.
Q. Do you recognize that man?
A. No, sir.
Q. Could you recognize him?
A. No, sir.
Q. What else did you see?
A. I seen the back of him.
Q. What did he shoot with?
A. A riot gun.

MR. McCARTER: I do not understand it is the man that shot at the deceased. I do not suppose it is material.

MR. FLORANCE: Very material to show what they did there.

THE COURT: Proceed.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. What else did you see?
A. That is about all I seen. We pulled on up to Carteret then.

MR. FLORANCE: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Mr. Ryder, are you what we call a brakeman?

A. Yes, sir.

Q. Where were you stationed when your train first began to slow up?

A. Up in the engine.

Q. On the engine?

A. Yes, sir.

Q. Must have been a Full Crew law?

A. There is a Full Crew law too. We had a full crew man on there.

Q. What is the brakeman doing on the engine?

A. Looking out for obstructions. We got a message to be on the lookout for obstructions on the track.

Q. When did you get this message?

A. Got one at Elizabethport and one at Grasselli.

Q. Somebody telegraphed out at Elizabethport, and also at Grasselli?

A. Yes, sir.

Q. That you were to be looking out for obstructions on the track?

A. Yes, sir.

Q. And you got one of those messages about that time?

A. No, sir; we got a message at Elizabethport that came from the Despatcher at Jersey City to be on the lookout for obstructions on the train track in the vicinity of the strike.

Q. In the vicinity of what?

A. In the vicinity of the strike. Then we got another message at Grasselli to be on the lookout

for obstructions between the Consumer's Chemical Works and Williams & Clark.

Q. You knew there had been a strike there?

A. Oh, yes.

Q. So that when the message came, in the vicinity of the strike, you knew where it meant?

A. Yes, sir.

Q. Had you had obstructions the morning before at Liebig's?

MR. WESCOTT; I object.

A. No, we didn't have that.

THE COURT: Well, he said he did not have any, so there is no harm done. Proceed.

Q. Do you know that one of the passengers was shot at the day before?

MR. WESCOTT: I object.

THE COURT: I overrule that. We are not going to try anything that happened the day before, unless it is something in relation to this case. He said he knew there was a riot, and that he had notice of obstructions.

MR. McCARTER: Yes.

Q. How many men were on the locomotive besides yourself and the two trainmen, the two enginemen?

A. Just myself, firemen and engineer.

Q. And where had you gone on to the locomotive?

A. I jumped on at Warner's, the station before Williams & Clark.

Q. Your regular station would have been where?

A. Warner's and the next stop Williams & Clark.

Q. No. Your regular place on the train?

A. Between the first and second cars.

Q. As you came around the curve below the Williams & Clark plant, did you observe any signals?

A. Yes. There was a fellow come running up the track there hollering at us to stop.

Q. And did you see any red flags or rags waved?

A. No. A fellow there with a red sweater on, but he wasn't waving it. They were shaking their hands and yelling to stop. That is all.

Q. You did not observe that thing attached to a stick standing up near the obstruction?

A. No, sir.

Q. At any rate, the obstruction was sufficiently serious to prevail upon you to stop the engine?

A. Yes. I couldn't tell just what it was. I went up and looked at it.

Q. And you found what, a tie across the track?

A. There was an old log, or some bulky thing laying there.

Q. Laid right across at right angles to the track, on the rail?

A. Just right across the track.

Q. That might have made a derail if you had gone on?

MR. WESCOTT: I object.

A. Well, I couldn't say that.

MR. WESCOTT: That is mere speculation.

Q. Was there anything else in the way of obstruction besides this old log?

A. That is all I seen.

Q. Was your train going at the usual speed as you approached the station?

A. No, we were going caution speed.

Q. Because of these telegrams you had?

A. Yes, sir.

Q. You found the obstruction, you found men running along the track yelling to stop the train, or something of that kind?

A. Yes, sir.

Q. Were there a crowd on either side of the track?

A. All the way in front of us, both sides of the track, and the middle of the track.

Q. Both sides of the track, and in the middle of the track?

A. Yes.

Q. Evidently strikers?

A. Yes, sir. Well, I suppose they were.

Q. How many do you suppose there were, four or five hundred?

A. Oh, I estimate about four or five hundred. Everybody around there.

Q. Did you observe that some of these people had bludgeons, or sticks, or clubs in their hands, or stones?

A. Yes. The strikers had some clubs.

Q. Did you see any of them have pieces of iron?

A. No.

Q. Didn't notice that?

A. Fellows come up around me had clubs.

Q. What kind of clubs?

A. Sticks, looked like sticks or clubs, that they would pick up some place.

Q. You say they came around you, that is, you were walking down in front of the engine?

A. Yes.

Q. And did you undertake to notice how many had clubs?

A. No, sir; I didn't.

Q. They were very much excited, were they?

A. Yes, excited.

Q. When did you first have your attention directed toward the Williams & Clark gate, at the office?

A. As soon as they started hollering.

Q. Beg pardon?

A. As soon as they started hollering.

Q. You mean as soon as the men came from Williams & Clark's shouting?

A. As soon as the men came from Williams & Clark's shouting.

Q. What did they shout, get away?

A. Give it to them, give it to them, and knock them down, and all those things.

Q. Did you hear anything else said?

A. I heard them hollering, give it to them.

Q. You heard "Give it to them?"

A. Yes.

Q. Then that directed your attention that way?

A. Yes.

Q. There were strikers on your left, and strikers on the right of the railroad at that time, weren't there, both sides?

A. Yes, sir.

Q. And both sides there were men who had clubs in their arms?

A. I won't say they all had clubs; the fellows around me had the clubs. They were the fellows around me.

Q. Had the obstruction been removed then?

A. Yes, just about that time somebody kicked that off the track.

Q. Just at the time you noticed the men coming out from Williams & Clark?

A. Yes, sir.

Q. Some man kicked the obstruction off the track?

A. Yes.

Q. Did more than one man do that?

A. I couldn't say. There was a crowd standing by him.

Q. Did you then get right up on your engine?

A. I went back and got on the engine and we pulled up to them.

Q. Which side of the track did you run?

A. On the left.

Q. On the left?

A. Yes, sir.

Q. How far did you get ahead of the engine?

A. Oh, about 75 or 100 feet ahead of them.

Q. And you ran back?

A. I ran back and got on the engine.

Q. Didn't take you but a very few minutes?

A. As soon as they started to shoot. It didn't take long for me to get back.

Q. Was the shooting done before you got on the train?

A. Before I got on the train? As soon as they come up there they started to shoot.

Q. Listen to the question. Was the shooting over before you got on the train?

A. Oh, no; it wasn't over. Just begun.

Q. Where did you go after you got on the train?

A. Got on the engine?

Q. You got on the engine?

A. Yes, sir.

Q. Standing on the left side or the right side?

A. I was over on the right side with the engineer.

Q. Looking out that side?

A. Yes, sir.

Q. With your back to the Williams & Clark side?

A. Yes, sir.

Q. Now, as I understand you, these men that came out of the Williams & Clark plant, came out down here where the track goes in, didn't they, down by the office?

A. Yes.

Q. Do you remember the track goes in there?

A. Yes, sir. Right before these—that big gate.

Q. Some witness said they came out away up here where the mark is "X?"

A. No. They came out where the gate was, where the office was.

MR. WESCOTT: That is where the gate was (indicating). You got him to say that.

MR. McCARTER: I did not get him to say that. I asked him to put a mark here, and there is an "X" that he put. I did not get him to say anything. He said it all.

Q. The men that you saw were the men that came out by the office?

A. Came out of the gate there by the office.

By THE COURT:

Q. Do you understand that map?

A. Yes, sir.

Q. Can you locate where your train stopped the first time?

A. Yes, sir.

Q. Where? Show us on the map.

A. We stopped right about here (indicating on map).

Q. Where on that map were these men that you say you saw coming out of that factory gate?

A. As soon as they come out they scattered all over here. Run up this way, and that way, and all over. Just scattered.

THE COURT: That is all.

By MR. WESCOTT:

Q. Do you mean the men who came out of the gate scattered up there?

A. They scattered all over, all directions.

By MR. McCARTER:

Q. At any rate, you were at a certain place where you could see the men coming out of the gate, could you?

A. Yes, sir.

Q. Do you think you could see men come out of the gate from where you indicated to his Honor, the Judge?

A. Yes, sir; certainly.

Q. What?

A. Certainly. There is nothing there to stop me. Nothing there to stop your view.

Q. Where is the gate that you refer to? Point it out on the map.

A. Well, according to this, that is here, the gate should have been here (indicating).

Q. You think you could have seen that gate from the position you pointed out to his Honor, the Judge, do you?

A. Yes, sir. I was over here. There is no obstruction there to stop you. It is all open.

Q. Around the corner, isn't it?

A. No, it is straight.

Q. Isn't there a fence there?

A. There is a fence right straight around.

Q. How high is that fence?

A. Oh, about seven feet.

Q. At this time you were on the track, weren't you?

A. Yes, sir.

MR. McCARTER: That is all.

RE-DIRECT EXAMINATION:

By MR. FLORANCE:

Q. What kind of a fence was that?
A. Wooden picket fence.
Q. How wide were the pickets apart?
A. Oh, about two or three inches apart.

MR. FLORANCE: That is all.

GEORGE RICHARDSON, a witness produced by and on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. FLORANCE:

Q. Mr. Richardson, where do you live?

A. Port Reading.

Q. What is your business?

A. Section foreman, of the section gang.

Q. On what?

A. Central Railroad extra gang, and as we call the floating gang.

Q. I call your attention to the 19th of January, 1915; where were you early, about eight o'clock that morning?

A. Working about in the neighborhood of about 1,200 feet from the Williams & Clark station, up on what we call the Carteret extension of the Sound Shore Railroad.

Q. Which way from the Williams & Clark station was that place you were working?

A. Towards the East Rahway, from the north, I would call it.

Q. Up on what is called the East Rahway Branch?

A. We call it extension, East Rahway Extension.

Q. How many feet do you say you were away from the Williams & Clark station?

A. As near as I can judge 1,000 or 1,200 feet; maybe a little more but not less than that.

Q. What did you see that morning?

A. Oh, I saw that train due there at Carteret at 8:06, and she came around from the Consumer's and slowed up. She comes around slow at the

Consumer's Works; that is the next plant below the east of Williams & Clark. When they got half way or a little closer they came to a full stop.

Q. About how far did they come to a full stop from the Williams & Clark station?

A. I should judge the engine stopped about 150 feet; it looked that way to me from where I stood.

Q. What did you see then?

A. I was kind of surprised to see the engine stop.

THE COURT: What did you see, not what you thought. Just tell us what you saw.

A. I saw quite a number of men standing around there, some on the track, I should judge probably four or five of them. It looked like that to me. I thought the engineer was dilatory and that—

THE COURT: Not what you thought.

Q. What did you see, Mr. Richardson? Confine yourself to that.

A. After the engine laid there probably two or three minutes I saw two men running down alongside. I saw two men running down alongside the train, and they got up between the first car and the second car from the engine, got up on the step and looking in the door on both sides as if they were looking for somebody; got off, and they ran down to the next two cars and did the same. They got off and ran down to the next ones. With that the train started and pulled up to Williams & Clark station proper.

Q. What were you doing all this time?

A. Standing up on the track with a gang.

Q. You did not move from that point?

A. No, sir; I did not move from that point.

Q. What else did you see?

A. The next thing I saw was a volley of shots fired.

Q. From what direction did the shots come?

A. The first volley was fired, was fired on the opposite side of the train from where I stood between the Williams & Clark Company's building and the train. I could see them between the coaches and underneath the coaches we could see the first blue flame from the guns as they shot through the air, and the next minute we could hear the reports, and right after that there were shots fired on the other side from where we were standing. There was quite a crowd of men on the track, on the salt meadows.

Q. Where did the shots seem to be coming from?

A. As near as I could tell from where—

MR. STRICKER: We object to where it seemed be coming from.

THE COURT: I will allow that.

Q. From what direction did you see the shots coming?

A. Towards the side on which the Williams & Clark factory is situated; on the side of the train over across to the other opposite side of the train.

Q. What next did you see?

A. Then the crowd scattered which was on this side and then there was one ran out on the salt meadows and there was a shot fired at him —or at least it appeared to be fired at him, the blue streak seemed to be pointed right towards him and as the shot was fired the man fell on the marsh right on his hands and face, and then he got up and began to run as far as about 25 yards, and there was another shot fired and he fell again

right on his hands and face in the meadow grass—marsh there.

Q. Which way was he running?

A. When he got up he was running toward the Carteret Hill.

Q. Away from Williams & Clark?

A. Away from the train, yes.

Q. What else did you see?

A. That's about all I saw at that time.

CROSS EXAMINATION:

By MR. STRICKER:

Q. What you saw there was between the cars and under the train; is that correct?

A. That is correct, under the train.

Q. And you were 1,200 or 1,500 feet away?

A. As near as I could judge; of course, I didn't measure.

Q. Do you understand the plan we have here?

A. I think I do.

Q. Do you understand that map?

A. Yes, sir.

Q. Can you show us on here where you were?

A. (Witness does so.) This here is the name for East Rahway.

Q. Yes.

A. We were up here above that switch; we call that here—

MR. STRICKER: Never mind what you call it. You were somewheres about there?

THE WITNESS: Yes (indicating).

Q. And what you really saw was the smoke?

A. Smoke.

Q. And from the smoke you saw you concluded there was shots fired from both sides of the track; is that correct?

A. Well, yes; that is correct.

Q. And the crowd was on both sides of the track?

A. Yes, sir.

Q. And beyond the track?

A. And beyond the track.

Q. Did you see any of those strikers before this thing occurred?

A. What do you mean?

Q. Did you see any of the so-called strikers before this thing happened that morning?

A. The crowd collected there probably about half an hour before that train came there.

Q. Were any of the crowd on that had collected there?

A. They weren't close enough to me to find out.

Q. You didn't see anybody with sticks or clubs?

A. Only those two men I spoke of, that went down along the train.

Q. The shots you heard were fired from what? You don't know whether they were revolver shots, gun shots, rifles or what?

A. I would think they were rifles, because the report was too loud to be revolvers.

Q. And not loud enough for shotguns?

A. I don't think so.

MR. STRICKER: That is all.

WILLIAM OLER, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Oler, where were you employed on January 19th last?

A. The Central Railroad of New Jersey.

Q. In what capacity?

A. Trainman.

Q. Do you know where Williams & Clark station is on the Sound Shore Railroad?

A. Yes, sir.

Q. What train were you on on January 19th last?

A. On the Sound Shore train No. 953.

Q. And that was due at Chrome about what time?

A. About 8:15—about 8:19.

Q. Did you make the regular stop at the Williams & Clark station that morning?

A. Yes, sir.

Q. Did you stop at the station?

A. Stopped at the station.

Q. I am referring to the Williams & Clark station?

A. Williams & Clark station; yes sir.

Q. Did you stop just beyond it?

A. Yes.

Q. Why did you stop beyond it?

A. Well, that is, I would have to answer that in the negative.

Q. You don't know?

A. The reason for stopping was propounded to me afterwards, or I discovered why.

Q. What did you do when that train stopped beyond the station?

A. I looked out of the side door and seen it stop, and got my flag and was going to get off to protect the rear—

Q. When you looked out of the door what did you see?

A. I saw a body of men up forward at the end of the train, at the Williams & Clark station.

Q. Which side of the train?

A. Both sides I could see from where I was at that time.

Q. What happened?

A. Before I got off the train proceeded to Williams & Clark station.

Q. Yes. Did you observe anything as you came into the station?

A. Yes, sir.

Q. What was it?

A. I saw a body of men charging toward the train.

Q. From where?

A. From Williams & Clark plant.

Q. How many men were there?

A. I didn't count them, sir.

Q. Well, about how many, Mr. Oler?

A. There must have been in the neighborhood of 25 or 50.

Q. Did you observe anything about them?

A. Yes, sir; something very irregular.

Q. What was it?

A. Shooting.

Q. And from what were they shooting?

A. From firearms.

Q. Of what kind?

A. Those that I saw were—at a distance—were revolvers.

Q. What were you doing at that time?

A. Looking out the side door.

Q. State whether or not the train was still moving?

A. The train was just coming into the Williams & Clark station when I observed this. I took my flag; if the train came to a stop I was going to get out and protect the rear of my train.

Q. In which direction were those men shooting?

A. Those men were shooting toward the train from the factory, from the fence.

Q. State where the men were you had first seen near that track?

A. Between—the men that were doing the shooting were coming from the fence toward the train.

Q. You said when you looked out of the train you saw a lot of men on both sides of the track?

A. Yes, sir.

Q. Where were those men?

A. The train had splitten; I could see the right hand side. They were taken for the lot, for the vacant space back of the Williams & Clark station.

Q. Were there some men along the side track, on the left hand side of the train?

A. On the left hand side, on the side I was looking at there was.

Q. How many?

A. Probably three or four men running toward the rear of the train, and there were some two or more men alongside of the train, shooting after these men that were running; across by the fence there is another track where there was some tank cars on, and there was two men running there shooting over toward the train. They apparently ceased firing so as not to—

MR. McCARTER: No.

Q. Did you see anybody fall, Mr. Oler?

A. No, sir.

Q. See any guns there?

A. I saw revolvers. I saw one pump gun, commonly called pump gun.

Q. Did you see anybody that had been wounded?

A. Not until I got past the Williams & Clark station.

Q. And then what did you see?

A. I saw one man lying on the ground there just a little beyond the station, one man walking up toward the Carteret with his hands up alongside of him (indicating).

CROSS EXAMINATION:

By MR. STRICKER:

Q. How many men would you say had revolvers, Mr. Oler?

A. That is something I couldn't say, sir.

Q. Six?

A. I couldn't answer that question that way, sir.

Q. Ten?

A. I couldn't answer that question, for I didn't count them.

Q. I don't want you to give me the exact number. Can you approximate the number of men that had revolvers?

A. No, I could not.

Q. Could you tell the number of shots that were fired?

A. No, sir.

Q. And you wouldn't want to swear either that some of the shots you heard were not fired from the other side of the track?

A. I could not say that, sir.

Q. This crowd of men which obstructed the track amounted in number to about five hundred, is that correct?

A. I couldn't say who obstructed the track.

Q. I mean the crowd that were on the opposite side of the track?

A. There was a great number of men around the Williams & Clark station.

Q. In the neighborhood of four or five hundred men?

A. Yes, sir.

Q. A number of them had clubs and sticks?

A. I didn't see any of them.

Q. Not a single one?

A. No, sir. I saw one man passing in the rear of my train with an umbrella and that was all.

Q. You didn't see any of them shooting?

A. Except those men that came from the fence.

Q. Did you see anybody with clubs or sticks?

A. Not on the other side.

Q. You saw no one with stones?

A. No, sir.

Q. I take it after this train was stopped for reasons unknown to you, everything was nice and calm around there as you saw?

A. No; there was a commotion around there.

Q. Was there a lot of noise?

A. Firing again when the train started for Williams & Clark station.

Q. But before the firing began everything was nice and calm and peaceful there?

A. Apparently to me.

Q. To you, yes.

Q. (Continuing.) There hadn't been any outburst there, no noise?

A. No, sir.

Q. No shaking and waving of any clubs and cudgels?

A. Not to my knowledge.

Q. No shouting or yelling by any of the men on the track?

A. Not to my knowledge.

Q. I presume to this day you don't know who it was or what it was obstructed that track, do you?

A. No, sir.

Q. And are you still in the employ of the Central Railroad?

A. Yes, sir.

Q. You saw no obstruction there that day?

A. No, sir.

Q. Saw none removed?

A. No, sir.

Q. What part of the train were you on?

A. The fifth car from the engine.

Q. Did you leave your car?

A. No, sir. It was too interesting around the rear end, sir.

Q. It wasn't your duty to flag, was it?

A. Yes, sir.

Q. The train stopped?

A. Yes, sir.

Q. Why didn't you flag if the train was stopped?

A. For the simple reason there was too much firing around there for me to take a chance.

Q. Is it a rule of the company to flag?

A. Yes, sir.

Q. Anybody firing at you?

A. No, sir; I didn't get out so they had a chance.

Q. Anybody level a gun at you?

A. No, sir.

Q. Anybody undertake to interfere with you in any shape, way or form?

A. No, sir; not at all.

Q. When you stopped there was no firing going on, was there?

A. When we stopped?

Q. Yes?

A. Yes, sir.

Q. Was there firing going on when you stopped?

A. When we made the station stop at Williams & Clark.

Q. No, no, no, I don't mean the station stop; the train stopped before it got to the station?

A. Yes, sir.

Q. A full stop?
A. Yes, sir.
Q. Why didn't you get off and flag that train?
A. I did there.
Q. Oh, you did; and when that stop was made everything was quiet and calm?
A. At that time; yes, sir.
Q. Nothing unusual had happened?
A. Not to my knowledge.
Q. Did you know you were going to stop there?
A. No, sir.
Q. No information on that subject?
A. No, sir.
Q. Weren't you surprised when you stopped there?
A. I was.
Q. And that is the first intimation you had you weren't going through to the Williams & Clark station?
A. Yes, sir.
Q. Now, directing your attention to the first stop when you did get off when things were not quite so interesting, everything was nice and quiet?
A. Yes, sir.
Q. There was no outburst of any kind?
A. Not to my knowledge.
Q. You saw four or five hundred people there?
A. Yes, sir.
Q. You saw nothing of sticks, clubs, stones, pieces of iron or anything there?
A. Not that I recall.
Q. How far were you away?
A. I would have to look the length of five cars and an engine and 200 feet beyond that.
Q. How do you know that?

A. Because I knew that we stopped. I could see that. The cars and engine.

Q. Then you were prevented from seeing whether this crowd were armed?

A. Yes, sir.

Q. Because of the distance?

A. Yes, sir.

Q. And you would not want to tell us now what actually happened when in fact you were 500 or 700 feet away from what occured?

A. Not at that very point.

Q. That is, you will not testify to anything that occurred at that particular point?

A. At the first stop.

Q. Did you observe anybody coming toward the train?

A. No, sir.

Q. Did you hear made any inquiries pertaining to scabs there?

A. Not to my knowledge.

Q. In the other end?

A. No, sir.

Q. Did you see anybody get on the train?

A. No, sir.

Q. Which side were you on?

A. Left side.

Q. You hadn't seen any crowds there the day before?

A. No, sir.

Q. Or two weeks before?

A. No, sir.

Q. You didn't hear of the fact that a man from the very train on which you were a trainman had been shot at the day before?

MR. WESCOTT: That is objected to.

THE COURT: That is not cross examination.

MR. STRICKER: I am trying to test this witness's means of observation.

Q. Now, where did you make your second stop, as you call it; the Williams & Clark station stop?

A. The Williams & Clark—it is a full stop?

Q. You did stop there?

A. Yes, sir.

Q. When you came into that station when your train came to a stop there, was there shooting going on there?

A. Yes, sir; there was shooting going on before we came to a stop.

Q. Immediately before the shooting commenced where were you, that is, where was the train?

A. Rolling into the Williams & Clark station.

Q. How far from the Williams & Clark station was it when you heard the first shots?

A. About the time our engine came in front of Williams & Clark station, about.

Q. By the time the train had stopped did the firing stop?

A. No; the train had stopped—and that is where they came toward the end firing.

Q. Let me get this straight. Did the firing begin before or after your train had come to a stop in Williams & Clark station?

A. Before we came to a stop.

Q. It began?

A. Yes, sir.

Q. When did it stop?

A. After we stopped at Williams & Clark station.

Q. How many shots were fired?

A. More than I could answer, sir.

Q. One thousand?

A. I couldn't say.

Q. Two thousand?

A. I couldn't say.
Q. Only thirty?
A. I couldn't answer that question, sir.
Q. You say you are a trainman?
A. Yes, sir.
Q. Are you in the smoking car or in the coach?
A. I was in the baggage compartment of the smoking car—combination.
Q. Was anybody with you in that car?
A. Yes, sir.
Q. Who?
A. Express messenger.
Q. Mr. Vail?
A. Mr. Vail; yes, sir. Mr. V-a-i-l.
Q. And you had the same means of observation that Mr. Vail had?
A. Yes, sir.
Q. And you could see the same things that he saw?
A. Possibly not.
Q. What was to prevent you?
A. He was in the door looking out before I got to it.
Q. After you looked out you had the same means of observation as he did?
A. Yes, sir.

MR. STRICKER: I guess that is all.

PETER MOLNER, a witness produced on behalf of the State, being duly sworn according to law on his oath saith: (Through Interpreter.)

DIRECT EXAMINATION.

By MR. COAN:

Q. Where do you live?

A. Chrome.

Q. Were you there on January 19th last.

The Interpreter says witness is a Greek and cannot understand. The witness is therefore recalled.

ANDREW GANSSUCS, a witness produced on behalf of the State, being duly sworn according to law on his oath said: (Through Interpreter.)

DIRECT EXAMINATION.

By MR. COAN:

Q. Do you live in Chrome?

A. Yes, sir.

Q. You did, on January 19th last?

A. Yes.

Q. Do you know where Williams & Clark station is?

A. I do.

Q. Were you around there on the morning of January 19th?

A. Yes.

Q. Were you there when the train came in?

A. Yes.

Q. What did you do?

A. I saw the train stop a short way from the station and the people looking on to see whether any workmen were on it.

Q. What happened then?

A. When the train stopped the deputies came out from the office.

Q. What office?

A. Williams & Clark.

Q. And after they came out what happened?

A. One of them shot in the air. He said, "Begin to shoot."

Q. Well, after one shot in the air and said "Begin to shoot," what happened?

MR. STRICKER: I didn't understand him he said "Begin to shoot."

MR. SOMOGY: And said "Begin to shoot."

A. All of the deputies then began to shoot.

Q. What did those who were shooting have in their hands?

A. Guns and revolvers.

Q. How many men were around the station at that time?

By MR. STRICKER:

Q. How many of them?

A. Over a hundred.

Q. What did they do after the shooting?

A. The people didn't do anything.

Q. Well, did they stay there?

A. Then ran wherever they could.

Q. Did you run?

A. I did.

Q. What, if anything, happened to you?

A. I stopped by the track at a place where a man fell—a deputy followed me and he struck me on my arm. I started to run and he shot me.

Q. Where did he shoot you?

MR. STRICKER: I object to this, if your Honor please. We are not trying this case, I submit, if your Honor please.

THE COURT: We are not trying this case. I think when you prove that some of these strikers shot and he was hit, that is as far as you can go, unless you want to open up the whole case.

MR. COAN: All right. Cross examination.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Did you have a club that morning?

A. I had nothing in my hands. I had my hands in my pockets.

Q. You were one of the strikers, were you not?

A. Yes.

Q. And you were at a meeting in Van Ness Hall the night before, were you not?

MR. WESCOTT: I object to that. Your Honor has ruled this evidence out as I recall it two or three times. What happened the night before has several times been ruled out.

THE COURT: That is my understanding of it.

MR. STRICKER: I offer to show by cross examination of this witness that this man was one of a number who had met at a hall the previous evening; that he was one who participated in the passing of a resolution to come to the **locus quo,** where this thing occurred the following morning, for the purpose of committing an unlawful act.

THE COURT: Unless they did it, it wouldn't justify the shooting.

MR. STRICKER: I want to show that he was one of them that did.

THE COURT: I will overrule your offer.

MR. STRICKER: I pray an exception to your Honor's ruling.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Did you see a red sweater on the track that morning?

A. I saw a red sweater through the people.

Q. Through the people? Did you see the obstructions on the track?

A. No.

Q. And what time did you get there, that is, to the Williams & Clark station?

A. At the time when the half past seven or eight o'clock train arrived.

Q. Did you see any of the strikers with sticks and clubs?

A. I didn't see any of them with any sticks.

Q. Do you know of any of them with revolvers?

A. I don't know anything of it.

Q. Do you know a man by the name of Portus, Secretary of the Union down there at Roosevelt?

A. It is possible I might know him, but not by name.

Q. Do you know the Financial Secretary of the Union that was borne there to the strike?

A. I don't.

Q. Didn't you tell Andrew Portus on the 15th of April at Roosevelt that you knew of at least one man in the crowd that had assembled at Williams & Clark station that morning, that he had a 38 calibre revolver, which he always carried loaded in his pocket, and that that man was at the end of the train when the police came to search the man about that time?

A. No.

Whereupon, at 4.35 o'clock P. M. an adjournment was taken to Tuesday, May 25th, 1915, at 9.30 o'clock A. M.

New Brunswick, N J., May 25th, 1915.

THE COURT: I am ready to hear any further argument on the question of the sufficiency of this dying declaration.

MR. WESCOTT: The State proposes to recall Mr. Buckley to prove by him that the deceased made certain declarations.

THE COURT: Well, if you want to recall a witness then we will hold it up.

MR. WESCOTT: Yes.

SIDNEY ROLLE, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Rolle, where do you live?
A. I live in Elizabeth.
Q. What is your occupation?
A. I am the cashier of the United States Metals Refining Company at Chrome.
Q. Were you such on the 19th of January last?
A. Yes, sir.
Q. On that morning how did you come to Roosevelt from Elizabeth?
A. I took the Sound Shore train that leaves the port and goes down that way.
Q. About what time was that due at Roosevelt?
A. At about 8.10 or 8.12, somewhere around there.
Q. Do you know where the Williams & Clark station is on the Sound Shore line?
A. I do.
Q. As you came into that station on that morning did you observe anything?
A. Yes, sir.
Q. What was it?
A. As far as I remember, from five to ten minutes before we pulled into the station, or rather, the small house that is there, the train slowed up, and someone in the crowd shouted that there was a big crowd on the track, and I looked out of the window and saw men on both sides of the track, and just then I think it was that the train curved, that is, the tracks curved there, and I looked out

and I saw a mob of men congregated on the track.

Q. On what track was that, Mr. Rolle?

A. On the track on which we were riding.

Q. What happened after that?

A. I then, as I said—I think it was on the left hand side that I looked out of the window, because the track curved to the left, and I saw this mass of men sort of surrounding something on the tracks. What that was I don't know. But they formed a sort of, I should say, semi-circle and the train all this time was sort of slowing up, and I think the engineer blew his whistle, and the train then sort of pulled in and stopped. Now I don't know exactly whether we were at the station, because I had my eyes from one side of the car to the other. I jumped from one side to the other. And it as then, I think, that somebody shouted there are the deputies. And I looked out of the left hand side, and I saw, I should say, a dozen or so, or perhaps fifteen or sixteen men come out of the Williams & Clark factory.

Q. From where did they came, Mr. Rolle?

A. They proceeded from the factory, from the fence of the factory.

Q. And where were they when you first saw them?

A. They were about ten or fifteen feet, or perhaps a few feet more from the factory fence.

Q. And where did they go?

A. Well, they walked slowly towards the train. The track there, I think, is about parallel to the fence.

Q. State whether or not these men were in a body?

MR. STRICKER: I object to that.

A. They were.

MR. STRICKER: One moment. I submit the witness can tell the position they were in.

THE COURT: What is that?

MR. STRICKER: I say the witness may tell the position of these men—

THE COURT: You may cross examine about that. Proceed.

A. The men were not close together. I should say they were running average of about six feet apart. They were in what you call open order, I should say, and they advanced rather slowly I should say. Then, of course, I took my eyes off that side and I went to the other side. I might add that when the train about stopped there I watched from the third car, which is my accustomed seat, into the second car, which gave me a better view, and I then went to the other side and I saw that there were a large number of strikers on the other side of the track, and as far as I could see also ahead of the engine.

Q. When you say the other side of the track, what side is that with reference to the station?

A. It is the same side as the station.

Q. The men whom you have designated as deputies, which side were they on?

A. They were on the left hand side looking towards Carteret; in other words, the east of the track.

Q. What took place at that time, or after that?

A. The men kept on advancing. Then the next instant there was a big crowd seemed to come towards the train. That is as far as the strikers were concerned. And I think there were one or two, if not more men, got on the train, and one man started through the train, and I remember one other man who came from the crowd

of the strikers, got on the train and sat down on this little seat in the head of the car which runs lengthwise. He didn't do anything. He sat there and looked very pale, and kind of scared. And there was a large crowd on the platform. That was made up, I think, of some strikers, and also some of the employes who attempted to get off. And at the same time, as far as I could see, one moment I would be on one side and the next at the other, it seemed that the deputies kept advancing.

Q. Was there any shooting?

A. Well then, about when the deputies got, I should say, within 25 yards of the train, almost instantaneous there was a fusillade.

Q. And what happened after the fusillade?

A. Then, I think it was that I looked through the other side of the car and I saw the strikers run. I saw some run away from the train, that is, at right angles to the train, and the next instant I was on the other side and I saw some running the length of the train back. That is, they scattered.

Q. Now, what did the men who came from the factory do?

A. They kept on advancing and I then saw some of them shoot. That is, most of them had pistols in their hands, and some had clubs. Some had, I think, both. I saw some of the shots fired, but they were as far as I recall to the ground, and I saw the flash of one or two or perhaps more shots the flash of the powder, but they were down. I then went again on the other side and I saw how one man had evidently fallen in running away and he was in a small triangle. There is a track runs at right angles from the main line connected with a "Y" and the same small piece

of ground in there is in the shape of a triangle, and that was rather hard that morning and this fellow had fallen into it, and at that time most of the passengers were interested in this man whom I saw—in his struggles to get away. That is, for he was crawling on hands and knees through this water and finally regained the other side; that he was shot nobody in the car suspected, because everybody took it as a joke and laughed at this fellow, how anxious he was to get away.

Q. State whether or not the men from the factory crossed the track?

A. They must have crossed the track. I saw one man distinctly on the right side, or two; I saw one man standing there near the station, and one man at a distance of about fifteen feet to the right of the track, and he was clubbing one of the men and using abusive language to him and telling him to get on; this fellow then got a whack in the back and he ran, and that is about all I saw, and this man I saw standing there with this --what we call a pump gun—now as far as I recall those were the only two men I could possibly see, one on the right hand side of the track and west side of the track.

Q. Do I understand you, sir; a man with a pump gun on the station side of the track?

A. I did.

Q. State whether or not the strikers were armed?

A. I don't really—I can't say. I saw no fire arms in the hands of any of the strikers. I saw some have sticks, small ones. Some had long sticks and some evidently had stones in their hands. One man I saw with a brake shoe in his hand, and that was the fellow who was running towards Elizabeth, that is away from Carteret.

He had what we call a brake shoe in his hand and that was called to my attention, for somebody shouted there, "There goes a fellow with a brake shoe," and he ran, and the others I couldn't say what he had in his hand.

Q. The fellow with the pump gun, what was he doing when you saw him?

A. He was either fixing it, or trying to adjust it, or doing something with it, I don't know what he was doing.

CROSS EXAMINATION:

By MR. McCARTER:

Q. This was your customary train?

A. Yes, sir.

Q. And your destination was where?

A. Chrome, that is a short distance past Chrome station.

Q. As I understand it, your attention was first attracted that morning by the slowing up of the train?

A. Yes, sir.

Q. Your attention thus being aroused, and the train coming around a curve, you were enabled to look ahead and you saw a crowd of several hundred menu on both sides of the track?

A. Yes, sir.

Q. Ahead of you. Evidently, what we call strikers?

A. As far as I know afterwards they were strikers.

Q. Were they on the track as well as on both sides?

A. Yes, sir; they were.

Q. Did you see at any time that morning obstructions on the track?

A. I believe there was something, but I couldn't say what it was; I was not in a position to see what it was.

Q. And you remember, I imagine that the train finally came to a stop before it reached the station?

A. It may have come to a stop, but it wasn't for very long.

Q. That is not impressed on your mind?

A. No, sir; I couldn't possibly say that.

Q. Now I understand that your curiosity and interest and attention being thus aroused you kept running from one side of the car to the other, looking out first to the right and then to the left?

A. Yes, sir.

Q. You observed, I think you said, before you noticed the deputies at all, that the mass of strikers were around there, and did you observe at that time that they had stones and clubs? And one of them a brakeshoe, or was it afterwards?

A. No, it was more afterwards.

Q. Were they excited, this crowd?

A. Of course, they were far more excited after the shooting took place.

Q. I mean beforehand, they were running around?

A. They were on the sort of the outer edge there.

Q. What were they doing with those clubs?

A. I couldn't say, I saw very few; as I said before, I don't know what they did with them.

Q. What do you mean by brakeshoe?

A. Why it is the part of the brake that is pressed against the wheel, and air applied; it is the piece of iron which is about twelve or fifteen inches long, and it is an arc of a circle.

Q. And it is that particular part that the operator stops the train with that goes up against the wheel of the car?

A. Exactly.

Q. By pressure?

A. Exactly.

Q. You noticed at least one of these men with one of those things in his hand?

A. Yes, sir; I did.

Q. One of these strikers?

A. Yes, sir.

Q. Now I think you noticed first some shooting somewhere before you observed that the deputies had any fire arms, didn't you?

A. I think that I saw the guns in the hands of the deputies before any shooting took place. That I really couldn't say. As far as I remember —some with guns pointing up—pointing at the men; others with guns down.

Q. Are you able to indicate on the map or the easel about the location of the deputies when you first observed them?

A. I think so.

Q. Do you notice the office of the Williams & Clark plant? This is the office of the Williams & Clark plant. Of course the other buildings are not shown here, and here is where the siding with the switch comes in. Here is the railroad station and here is the line you came down.

A. When I first observed the men they were sort of in open order somewhere around here (indicating). I wouldn't say whether they were here or here (indicating), but they seemed to be about around here (indicating).

Q. This map is drawn to scale of twenty feet to the inch?

A. Yes.

Q. Yes?

A. Well, as I say, I couldn't observe them close enough to know how far that these offices are. It is hard to estimate them, but they were around here.

Q. They were moving slowly, as I understand it?

A. I think so.

Q. At this time had the men—the strikers, boarded the train yet?

A. Whether it was just at that time or not, I couldn't say. I know some men from the crowd boarded the train.

Q. At any rate, after you had seen and first observed the strikers, you knew there were some men on the train, some of the strikers, didn't you, after you first saw the deputies?

A. Yes, sir.

Q. There were men on the train?

A. Yes, sir.

Q. And any of these men you saw looked scared?

A. Yes.

Q. They continued on the train?

A. I think they did; I think they went on a little ways further; they may have gotten off at the Liebig plant here; I couldn't say; I don't know whether I said that before, but I think I said one man went through the train.

Q. I don't suppose you personally knew any of the strikers?

A. No; I did not.

Q. Or any of the deputies?

A. I did not.

Q. Was there any distinguishing mark about the dress of either?

A. Well, I recall only one man.

Q. No. I simply asked you if there was any distinguishing mark about the dress of either, so that as they were massed together in the crowd you could distinguish them.

A. Yes, there was.

Q. What was that?

A. There was a red sweater.

Q. One man had a red sweater on that you saw?

A. Yes, sir.

Q. I mean there was no uniform or anything of that kind?

A. No, sir.

Q. That pointed out this man as being a deputy rather than a striker, after they got in the crowd with one another?

A. No, sir; none whatever.

Q. So that a man in the crowd to the right or the left of the track, after they got interspersed, might have been a striker or might have been a rioter, and you would not know the difference?

A. Right. I wouldn't know.

Q. Did you see this red sweater on the pole on the track to stop the train?

A. No, sir.

Q. Do you remember making a statement somewhere in that locality, possibly at the works of the American Agricultural Chemical Company, or at your own company on the 1st of March, in the presence of the stenographer, this gentleman who is sitting there?

A. I did.

Q. I imagine your recollection of that exciting time is perhaps more precise and reliable then than now?

A. Possibly.

Q. Naturally it would be, wouldn't it?

A. Possibly, yes.

Q. I observe that the report that is handed us of what you are said to have stated at that time reads as follows—

MR. WESCOTT: I object to that.

THE COURT: What do you object to.

MR. WESCOTT: No matter what the report says. The question is, what the witness said.

MR. McCARTER: This witness.

MR. WESCOTT: The witness may well be asked if he said so.

MR. McCARTER: I will change it, Attorney General, to suit you.

Q. Didn't you say at that time, speaking of the crowd, "They all appeared to have sticks in their hands, and it was not until I heard a few odd shots, and then a volley, that I noticed that the deputies had revolvers in their hands?"

A. As far as I recall it may have been that way, or not. I think the facts are not clear enough in my mind. It may have been, I may have said that. As I recall it now, I do not know which of the two statements is the more true.

MR. McCARTER: That is all.

MR. COAN: That is all.

PAUL MARTENS, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Martens, you reside in Elizabeth?

A. Yes; I do.

Q. What is your occupation?

A. I beg your pardon?

Q. What is your business?

A. I am a superintendent with the Goldschmidt Detinning Company.

Q. Where is that plant located?

A. That is located in Roosevelt.

Q. How do you get from Elizabeth to Roosevelt?

A. By train.

Q. What train?

A. Central Railroad train.

Q. On the Sound Shore Branch?

A. Yes.

Q. Did you get down on the morning of the 19th of January last?

A. Yes, I did go down there.

Q. Do you know where the Williams & Clark station is on the Sound Shore Road?

A. Yes; I do.

Q. As you came into the Williams & Clark station on the morning of January 19th, did you observe anything unusual?

A. Yes, I did observe something unusual.

Q. What was it, Mr. Martens?

A. When we approached that station I saw a big crowd waiting there, about, I should judge, 200 or 300 men, and I saw them—I could see it be-

cause there was a curve there, and I saw them raising their hands, and they tried apparently to stop the train, which they did, because the train stopped a distance before the station. Right after the train had stopped I heard some argument, some shouting; or I might say before, while the train was slowing down, I saw the deputies coming out from the plant.

Q. From what plant, Mr. Martens?

A. From the Williams & Clark plant.

Q. And what part of that plant did they come from?

A. They came out of the gate.

Q. Where is the gate?

A. Well, I don't know the direction. It is at the corner.

Q. Do you know where the office building is of the Williams & Clark plant?

A. No, I don't know exactly where it is.

Q. Will you look down at this map and see if you can show us what part of the plant they come out from. Step down to it.

A. Yes. They came out of this corner here (indicating on map).

Q. And how many were there about?

A. There were about forty or fifty.

Q. As they came out from that plant, what did they do?

MR. McCARTER: I think he had better say what occurred.

MR. WESCOTT: Oh, no. Just say what they did.

A. They spread out to a line, or they came in little groups and bunches, but not all in one bunch. They spread out a little, and I saw them handling

revolvers, but I didn't see any shooting then. And soon one shot rang out, followed by a great many more.

Q. And by whom were the shots fired?

MR. STRICKER: I object.

THE COURT: Ask him what happened.

MR. STRICKER: The ground of this objection is that this witness said he saw no shooting, only two or three questions back.

MR. WESCOTT: The witness did not say that.

By THE COURT:

Q. Did you see any shooting?

A. No, I didn't see any shooting. I heard it.

By MR. COAN:

Q. Where did the shots that you heard come from?

A. As much as I can judge they came from the deputies.

Q. And by deputies do you mean the men who came out from the plant, or not?

A. Yes, I mean those men.

Q. Did those men whom you saw come from the plant have anythiing in their hands?

A. Yes. They had revolvers in their hands, some of them at least.

Q. After this firing what did the strikers do?

A. Most of the strikers ran away, and some of them stood still at the station when the train passed that station.

Q. Which side of the train were you sitting on, Mr. Martens?

A. At first I was sitting on the left side, and when the train started moving again I moved over to the other side, to the right side.

Q. Do you know whether or not any of the men who came from the plant crossed the track?

MR. STRICKER: I object to that question. This is an intelligent witness and he ought to tell just exactly what he saw.

THE COURT: I think the State has a right to call his attention to the particular fact. I will allow the question. You may take an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. (Question repeated by stenographer?)

A. I remember to have seen one man on the other side of the track. I saw him when the train moved already. He stood right next to the station.

Q. What was he doing?

MR. McCARTER: I object as immaterial.

THE COURT: I will allow the question. Proceed. Answer it.

A. In his left hand he had a revolver, and in his right hand he had a stick. And he urged the strikers to run away.

Q. Did the train pull away from the station?

A. Yes. By that time the train pulled away from the station and moved along slowly.

Q. As the train pulled out of the station what did you observe?

A. I saw—well, some of the strikers were still running away, and quite some stood near the station, and along the tracks. I noticed that they had stones, or pieces of cinders, and some had clubs in their hands. They just stood there.

Q. Did you see anybody who had been shot?

A. I did not see anybody at the moment he was shot. I saw some being shot. I saw one man wounded in the foot, and one in the hand, and one was crawling through the meadows there.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Mr. Martens, your station is what, your regular station?

A. The one I get off?

Q. Yes, sir.

A. Is Chrome station.

Q. That is still down towards Liebig?

A. Yes. It is beyond Liebig's there.

Q. Well now, I suppose your attention was arrested or attracted by the fact that this train slowed up that morning?

A. Yes. I couldn't say what I noticed first, that I saw the crowd first, or whether the train slowed down first.

Q. But at any rate, instead of continuing reading your paper, or whatever you might be doing, you were attracted and looked out and you saw this crowd?

A. Well, I was not reading the paper then, because I—

Q. Well, you saw the crowd anyway?

A. I saw the crowd, yes.

Q. And the curve of the track enabled you to look ahead and see the crowd on both sides of the track, didn't it?

A. Yes. I could see the station and everything right near to the station.

Q. At that time were you sitting on the right or left hand side of the car?

A. I was sitting on the left hand side of the car.

Q. Alone or in company?

A. I was sitting alone.

Q. Were you in the same car with Mr. Rolle,

who has just testified just before you?

A. I don't remember whether I saw him that morning. But it was the first car from the rear.

Q. Sitting on the left hand side coming around that curve you observed this crowd on both sides of the track and on the track?

A. Yes, sir.

Q. And the train came to a stop, didn't it?

A. Yes.

Q. Did you know personally, or did you only hear that there was some obstruction on the track?

A. I didn't see that personally. I had heard it.

Q. How long a time would you judge the train remained standing at that point above there?

A. Well, not very long. I should judge about three minutes.

Q. Did you see any of the strikers board the train?

A. No, I didn't see it.

Q. Did you hear what they said, any of them, about scabs, or anything of that kind?

A. No. I was too far away from it. I couldn't hear.

Q. Which car was it you were in?

A. It was the third car from the rear.

Q. Do you know how many cars there were on the train?

A. No, I do not know just exactly.

Q. Was it very full?

A. It was the regular train.

Q. Was it full of passengers, crowded, or only a few?

A. The same crowd that is on that train every morning. It is fairly full. I mean we could all get seats.

Q. But it was daylight so that you could see everything?

A. Yes.

Q. What time, about eight o'clock?

A. Yes. It was about eight o'clock. The train leaves the Elizabeth avenue station at 7:44.

Q. Did you see one of the strikers have a piece of iron in his hand?

A. No, I did not see them having any iron in their hands, no.

Q. I saw clubs and sticks?

A. I saw clubs and sticks and pieces of cinder.

Q. Do you mean slag?

A. Yes, slag, which apparently had been used for building the railroad down there.

Q. About how big were these pieces of slag?

A. Well, about as big as your head.

Q. Big as your head?

A. That big (indicating).

Q. Was there much excitement, much noise?

A. Well, of course, there was some noise, but I couldn't hear because the train moved.

Q. It was not a dumb show. There was noise, but you could not distinguish what they were saying?

A. I couldn't distinguish. I just heard a general shouting.

Q. Had you crossed over to the right side of the car before you noticed the deputies?

A. No. After I noticed the deputies.

Q. After you noticed the deputies in the position that you have noted, you then crossed over to the right side?

A. Yes.

Q. Was that before or after you heard any shooting?

A. Well, that was while the shooting was going on.

Q. How near were the rioters on the east side, or left hand side, of your train, and the deputies together, when you last noticed them; pretty close?

A. Yes, they were right at each other.

Q. Right after each other?

A. Yes.

Q. Then it was when they were right at each other that you heard this firing, wasn't it?

A. No. I heard the firing before that too. I mean when I first saw them they were quite some distance apart from each other. When I passed them on the moving train again, then I saw they were right at each other.

Q. Was the train moving when you heard the first shot?

A. No. The train had come to a stop already.

Q. And you were on the right hand side when you heard the shot?

A. I was on the left hand side.

Q. You were on the left hand side?

A. Yes. When I heard the first shot.

Q. These men were foreigners, these strikers?

A. Yes.

Q. When the strikers and deputies got all intermixed, as you say, later on, I do not suppose you could distinguish—

MR. WESCOTT: He did not say they got all intermixed.

MR. McCARTER: He didn't use that phrase. But he said they got practically that way. I say he did say they were all close together.

Q. Wasn't it a fact that they finally did get close together?

A. Yes, they were close together.

MR. McCARTER: Do you prefer that to intermixed?

MR. WESCOTT: We are close together, but not intermixed.

Q. When they were all close together, if the Attorney General prefers that phrase, was there any way by which you could distinguish the one from the other, which was a striker and which was a deputy? You don't know that?

A. Oh, yes; I think I could tell that with a degree of certainty.

Q. You did not know either? You had no acquaintance with either.

A. No, but I think I can tell a foreign laborer from a deputy.

Q. Even in that excitement?

A. Yes, I could.

Q. What number of foreign laborers do you think there were there all told in the whole crowd?

A. Between around two hundred.

Q. I think you said at first between two and three hundred.

A. Yes, between two and three hundred.

Q. How many on the left hand side and how many on the right? About half and half, fifty-fifty?

A. No. There were more on the right hand side than on the left hand side. As a matter of fact I had moved over to the other side. After the train moved I did not see any on the left hand side at all.

Q. Because you were looking out the right hand side?

A. Yes.

Q. Where were you when you heard the last shot, on the right or left hand side?

A. On the right hand side.

Q. So that when you say that as good as you can judge the shots came from the deputies, all you can say about that is that they came from the general direction in which the deputies were? That is all you mean, don't you?

A. Yes, that is all I can say.

Q. I think you said you saw some forty or fifty men whom you thought were deputies coming away in a place you marked out, from Williams & Clark's?

A. Yes.

Q. How many of that forty or fifty that you saw, had revolvers or firearms?

A. Yes. Well, that is very hard to say, because I was quite a distance away. I might say I saw about ten.

Q. About ten.

A. Ten which I distinctly saw have them in their hands; yes, sir.

Q. Are you able to tell the jury whether those ten that you noticed had some kind of firearms, had revolvers or riot guns, or something of that kind?

A. I did not see any guns, any riot guns.

Q. Those that you noticed were revolvers?

A. Yes.

MR. McCARTER: That is all.

MR. COAN: That is all.

WILLIAM VALENTINE, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Valentine, where do you live?

A. I live in Elizabeth.

Q. What is your business?

A. Salesman for the Chrome Steel Works.

Q. Are you accustomed to go to Chrome every day?

A. Yes, sir.

Q. How do you go from Elizabeth to Chrome?

A. I usually leave on a train that leaves at 7.44 from Elizabeth avenue, and arrives down at Chrome about 8.15 or 8.20 sometimes.

Q. Was that the train you went down on on the morning of January 19th last?

A. That was the same train I went down on.

Q. Do you know where Williams & Clark station is on the Sound Shore Railroad?

A. Yes, sir.

Q. As you approached that station on the morning of January 19th last, did you observe anything?

A. Well, as we were going into the station the train stopped, and being curious I arose from my seat and I looked out and I saw a commotion, and I got off the train to see what was going on, and I saw the conductor run up toward the engine; the engine was just about at the station, and I saw a lot of men that I found later on were deputies. I saw them running across the track.

Q. Where were they when you saw them?

A. I saw them to the left of the train?

Q. Do you know where Williams & Clark plant is?

A. Yes, sir.

Q. Where were they with relation to the Williams & Clark plant when you first saw them?

A. They were firing as I looked out. They weren't all at the station. They were coming from the plant—from the gate.

Q. How far away from the plant were they?

A. They were at the railroad track, most of them.

Q. What took place then?

A. I saw the conductor walk down toward the engine, and all of a sudden I saw him turn around and run back. I saw shooting going on and I was at the last car then, and I didn't get any further because I thought there might have been—they might have been only blank cartridges or something, and I looked around and saw the conductor run and I thought it about time for me to get back to the train, that we were going to start again.

Q. Which side of the train were you on?

A. The left hand side.

Q. The side nearest the Williams & Clark—

A. The plant, yes, sir.

Q. What car had you gotten off?

A. I got off the smoker that was the last car.

Q. Where did you go when you got off?

A. Just at the step. I didn't get any further than the last car.

Q. This shooting that you said you saw, where did that come from?

A. That came from the left of the track, it came from the deputies; there was no strikers on that side then.

Q. How were they firing, those men you saw shooting?

MR. McCARTER: Did he say he saw shooting?

MR. COAN: Yes, sir.

MR. McCARTER: I don't think he did.

By MR. COAN:

Q. Did you see them shooting?

A. Oh, yes, sir. I did.

Q. Where were they firing?

A. As I went to get on the step of the car there was four men ran toward me and up over the step, and I saw two running back to get on the train, and the other two came with revolvers, and they were firing at the two men running away, and I got off on the other side to see what was going on, and I really thought that they were blank cartridges, because they were firing right straight ahead.

Q. Did you see anybody that was shot?

A. I didn't until the train was coming up the hill, and then I saw blood coming from different men lying around; I saw about three or four, I guess.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Mr. Valentine, it seems that the train stopped according to some of the evidence here twice that morning. Do you recall that?

A. It only stopped once, that I remember.

Q. Was that the station stop?

A. Just before it got to the station; it usually stopped beyond that.

Q. You were in the smoking car?

A. Yes.

Q. Last car?

A. Yes, sir.

Q. Where was the engine at the time of this stop?

A. Just at the station.

Q. So that it was a station stop you refer to?

A. Yes, sir.

Q. Do you mean to tell me that the train hadn't been stopped before that?

A. I don't remember it being stopped.

Q. This smoker is a combination baggage and smoker?

A. Yes, sir.

Q. It was the last car of the train?

A. Last car, yes.

Q. You travel on the train regularly?

A. Every morning.

Q. Do you know the crew?

A. Yes, sir.

Q. Dou you know Vail, who was the express messenger on the train?

A. I know of him. I know he was on that train

Q. And in that compartment behind?

A. Yes, sir.

Q. Was the baggage end of the car forward or aft?

A. Aft.

MR. McCARTER: We speak like boatmen, both of us.

Q. So that if that train stopped up the road on account of obstructions, you didn't notice it?

A. I knew there was something unusual going on.

Q. Answer my question. If that train stopped further up on account of an obstruction which had to be gotten out of the way before it could proceed, you don't know that?

A. I wouldn't know that.

Q. You didn't know that?

A. I woudn't know that. I was seated in the train.

Q. I don't care what you would know. The question is you didn't know that?

A. No, I didn't know.

Q. You heard the first shot I suppose?

A. I won't say that.

Q. Well ,had you heard any shots before those you have described?

A. Well, I—

MR. McCARTER: You can answer that.

Q. Had you heard any shots before those you described?

A. Only what I saw.

Q. You are an intelligent man. Do you think that that answers my question when I ask if you heard any shots other than those you describe, and then you talk about something else; that is a plain question. Did you hear any shots other than those you have described?

A I don't quite understand your question.

Q. You have told us you heard some shots?
A. Yes, sir.
Q. And you saw some deputies firing?
A. Yes, sir.
Q. You said that. And that was after the train reached the station. Now I want to know if you heard any other shots than those you have referred to?
A. No, sir.
Q. Do you mean to say there was no strikers on the left of the track?
A. Only the two after I got on the train. I don't know where they came from, whether they came out of the train.
Q. Do you mean to say there was no strikers on the left of the track except the two strikers you saw?
A. I couldn't say.
Q. You didn't see any?
A. No, I didn't see any. They all look alike to me. They were all men.
Q. And you couldn't distinguish striker or deputy?
A. No, they were all men.
Q. And they all looked alike to you as you say?
A. Yes.
Q. You got off the car and stood right by the platform for a moment, and you saw the conductor running around and you got on the train?
A. Yes, sir.
Q. How long were you on the ground?
A. May be three minutes, four or five minutes, something like that.
Q. That is a long time; you didn't walk any?
A. No, I just stood there.
Q. You just stood there. Where did the conductor get on?

A. He got on at the first, up at the engine.

Q. How near were the men that were running to the men that were shooting—what seemed to you to be blank cartridges?

A. There were two men across the platform.

Q. And how near were they?

A. I couldn't tell that.

Q. A mile apart or one hundred yards, or one hundred feet, or fifty feet apart?

A. They might have been five or six feet, about five or six feet, may be.

Q. About five or six feet?

A. Yes, sir.

Q. Well, are you able to tell us about how many shots you heard?

A. No, sir.

Q. Are you able to tell us about how many men you saw actually shoot?

A. One.

Q. One; and how many times did that one that you saw shoot?

A. Well, I don't know, I couldn't say.

Q. More than once that you know of?

A. More than once.

Q. More than once?

A. It repeated I guess a couple of times.

Q. Twice then?

A. About twice.

Q Was he one of those two that followed the two that were running away?

A. Yes, sir.

Q. That is the person you swore that did the shooting?

A. Yes, sir.

Q. How do you know he was a deputy?

A. Well, they came from that side and I took it for granted he was a deputy.

MR. McCARTER: That is all.

MR. COAN: That is all.

MR. McCARTER: That man didn't hit anybody, did he?

THE WITNESS: I couldn't see that.

ROBERT PALM, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Palm, where do you live?
A. Elizabeth.
Q. What is your occupation?
A. Mechanical engineer.
Q And by whom are you employed?
A. Chrome Steel Works.
Q. Do you go to Chrome every day?
A. Yes, sir.
Q. How?
A. On the Sound Shore Line.
Q. Do you know where the Williams & Clark station is on the Sound Shore Line?
A. Yes, sir.
Q. Did you go to Chrome on the morning of January 19th last?
A. Yes, sir.
Q. As you approached Williams & Clark station, did you observe anything?
A. I saw a lot of men that morning at the station?
Q. Where were those men whom you saw?
A. They were on the station.
MR. COAN: Speak louder.
A. Along the station, that station.
Q. And did you hear or see any shooting there?
A After a while there was a whole lot of men coming running out of the Williams & Clark plant.
Q. Where did they come from in that plant?
A. They opened the big gate, right at the entrance to the gate house.

Q. Is that the office?

A. I don't know just exactly if it is the office.

Q. Step down to this map and see if you can show us just exactly where that gate was?

MR. McCARTER: I suppose we had better explain the map to the gentleman first, he can't go to a blank piece of paper.

(Witness descends and goes to the map.)

A. About here somewheres, indicating. Here is the station. The men were crowded in here.

Q. Yes.

A. Our train was standing about in here (indicating) and as you approached the station I think—well, now, I wouldn't say whether they came here or there (indicating).

Q. You think it was one of those two places?

A. Yes, they came running across here anyway, and they stopped on this side.

MR. McCARTER: Which side?

A. On the station side. And the men were all running out this way, and they were shooting—those men stood there shooting right about this track; it was the end of the train.

Q. Where were they standing when they were shooting?

A. The men I saw were right on this side of the track. They stood along here shooting.

Q. What car were you in, Mr. Palm?

A. About third car from the front, about located at the crossing here.

Q. How many men did you see shooting?

A. Perhaps a half dozen or dozen.

Q. From what were they shooting?

A. Sir?

Q. What were they shooting from?

A. They were shooting in the direction of these men running.

Q. With what kind of instrument were they shooting?

A. Guns. I saw both guns and revolvers.

Q. What kind of guns did you see them have, Mr. Palm?

A. Why, I saw a gun, kind of pump gun I never seen before.

Q. What were the strikers doing when the shooting was going on?

A. Why they were running?

Q. Which way?

A. Towards the meadow, up towards Rahway.

Q. As the train pulled away from the station, did you see anything further?

A. I saw the man bleeding.

Q. And where were those men whom you saw bleeding?

A. Where they were?

Q. Where were they?

A. Well, between the railroad station and Carteret station. They were walking on up towards Carteret.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Now, Mr. Palm, how many times did your train stop that morning?

A. Twice. The first stop before we went into the station and then it stopped at the station.

Q. When it stopped the first time what did you do?

A. I looked out.

Q. See anything?

A. I saw a lot of people.

Q. Big crowd of men?

A. Yes, sir.

Q. Strikers?

A. Well, I presume they were strikers.

Q. Did you notice whether any of them had clubs or stones?

A. I didn't see any.

Q. You didn't see any?

A. No, sir.

Q. Did you put your head out the window?

A. No, sir. I saw them through the window. I didn't open the window.

Q. How could you see—as you were coming around the curve?

A. I saw through the frnot of the window. The one with seats sideways, up to the station, we were in the third car.

Q. Third car?

A. Yes, sir.

Q. Was that before the train had stopped or after the train stopped you noticed it?

A. As the train stopped I looked out. I was reading the paper.

Q. The track was directly straight there, I don't know how you could see if you didn't open

the window; the track is directly straight there?

A. It is not exactly straight there, is it? There is a glass window in front.

Q. And there is a car in front of you?

A. Yes, sir.

Q. And there is another car and a locomotive in front of that?

A. Yes, sir. I went out in front.

Q. You went out on the platform? That is what I am coming to; why didn't you say that?

A. I didn't go out right away.

Q. Did you go out when the train was stopped down below?

A. At the second stop.

Q. Before you heard some shots?

A. Yes, sir.

Q. Before you heard some shots?

A. Yes, sir.

Q. Where was the train when you heard the first shot, at the station or at this first stop; it was down at the station, wasn't it?

A. No; I think it was at the first stop, I am not sure.

Q. At that time were you in the car or on the platform?

A. I was in the car.

Q. You didn't see the men that shot then, did you, at that time?

A. Sir?

Q. (Repeated.)

A. Well, I saw the men come running across there.

Q. Of course you saw the men running across?

A. Yes.

Q. There were strikers on that side of the track?

A. On that side?
Q. On the left side too.
A. I didn't see any on the left hand side.
Q. You didn't see any strikers?
A. On the right side I saw them.
Q. Did you see any strikers on the left side?
A. I don't remember seeing any, no.
Q. You mean to say you didn't see 100 men on the left hand side of that track, strikers?
A. I saw them on the right side.
Q. You didn't see any on the left side?
A. No, sir; I didn't see any.
Q. You don't mean to say there wasn't any?
A. No, but I didn't see any.
Q. Did you move your seat to the left?
A. No, I was sitting on the right hand side.
Q. Do I understand some people called deputies crossed over the track?
A. Yes, sir.
Q. On the platform?
A. Yes, sir.
Q. You saw that?
A. Yes, sir.
Q. How do you know they were deputies?
A. I don't know they were deputies. I saw men with guns. And I think they had some kind of a badge on them.
Q. Badge on them?
A. Yes, sir; I think so, I am not sure.
Q. Where was the badge and what kind of badge?
A. I don't know if I did see any badges there.

By MR. McCARTER:

Q. You assume they were deputies because they had guns?
A. Yes, sir.

Q. That is all you know about it?

A. That is all.

Q. You concluded that any man whom you saw with a revolver was a deputy, or a club, either one, didn't you, isn't that a fact?

A. No. There wasn't any strikers left when those fellows—

Q. I didn't ask you that. Why did you—I say, did you conclude that every man that had a gun or a revolver was a deputy?

A. No, I didn't.

Q. Did you see any strikers with guns?

A. No, sir.

Q. Did you see any strikers with clubs?

A. No, sir.

Q. Or stones?

A. No, sir.

Q. Or pieces of iron?

A. No, sir.

Q. Or sticks?

A. No, sir.

Q. Didn't see any of those things?

A. No, sir.

Q. You say you don't know that those men were deputies. You conclude they were because they had guns, didn't you?

A. There was a crowd of men with guns, and I know they had deputies there. That is all I know.

Q. That is all you know?

A. Yes, sir.

Q. How do you know they had deputies there?

A. Why, the strike had been going on for a couple of weeks or so.

Q. Been disorder there before?

MR. COAN: I object.

MR. McCARTER: They are very sensitive about this disorder before.

THE COURT: You do not expect to go into that.

MR. McCARTER: I think we are entitled to test this man. He has given us a reason for—

THE COURT: Answer that question, then.

Q. (Question repeated by stenographer)?

A. No, I didn't see any there before. Not that I seen.

Q. How do you know they had the deputies there? How do you know?

A. Well, I was told so.

Q. You were told so?

A. I didn't know any of them.

Q. I suppose you were told also that these men who crossed the train with guns were deputies, you were told so?

A. Well, I assumed that.

Q. You assumed that?

A. Yes, sir.

MR. McCARTER: That is all.

ANDREW GANSCUTS recalled, testified further through Interpreter, Stephen F. Somogyi, as follows:

CROSS EXAMINATION (Continued):

By MR. STRICKER:

Q. Where do you work, Mr. Ganscuts?
A. Now in the foundry.
Q. Cartaret?
A. Yes.
Q. Do you speak any English?
A. No, I do not.
Q. How long have you been in this country?
A. Eight years.
Q. How old are you?
A. 25.
Q. You testified yesterday that before any shooting was done some person had given a command. Will you tell us what he said.
A. I know that much English.
Q. How much English do you know?
A. A little.
Q. What did the man say?
A. Start to shoot, shoot all.
Q. Do you know any other English besides that?
A. I do a little.
Q. Now where were you when that command was given?
A. I was on the track by the depot.
Q. And who was with you?
A. Workman people. People there.
Q. How many?
A. Over one hundred.
Q. Do you know Yeager?
A. Yes, I do.

Q. Was he there?

A. I am not positive.

Q. Do you know a man by the name of Frezini?

A. I do not.

Q. Did you notice a man there in a yellow raincoat and an umbrella, an Italian?

A. I might have seen him, but it is quite a time ago.

Q. Then you don't remember everything that happened on the morning of January 19th, do you?

A. There were a lot of people there, and I didn't know everybody by their names.

Q. You never heard of a man by the name of Frezini, did you?

A. I don't know the name. May be that I know him.

Q. Have you ever heard of a man by the name of Julius Yeager?

A. I did. I know him.

Q. Directing your attention again to the man in the yellow raincoat and umbrella, which you say you might have seen, isn't that the same man who spoke in Italian in Van Ness's Hall the night before?

MR. COAN: I object to what happened in Van Ness's Hall the night before.

THE COURT: What is the purpose of this?

MR. STRICKER: I simply want to identify this man, if I can.

THE COURT: Which man?

MR. STRICKER: The man with the yellow raincoat, as being Frezini, and we claim he is the same man—

THE COURT: This is not cross examination.

You can call him on your case. He has not undertaken to identify anybody, as far as I understand it.

Q. You had a pistol in your pocket that morning, didn't you?

A. I did not have anything.

Q. A pistol of a foreign make?

A. I had nothing at all. Simply a handkerchief.

Q. I asked you yesterday whether you knew a man by the name of Andrew Partos, and you said no. Do you still insist you don't know him?

A. I don't know the people by their names.

Q. Did you see any railroad ties on the track that morning?

A. Not at Williams & Clark.

Q. And you were there when the eight o'clock train arrived?

A. I was.

Q. Did you see the train stop?

A. I saw the train.

A. The train stopped on account of the number of people who were there.

Q. You didn't see a pole stuck in the track with a red flag, did you?

A. I saw it, but I don't know the purpose for which it was placed.

Q. You didn't know the train was going to stop, did you?

A. I did not.

Q. And you didn't know that the strikers were going aboard of that train for the purpose of pulling any scabs out of it, did you?

A. No. I know nothing of it.

Q. What were you doing there?

A. I simply stood there.

Q. Well, I know, but what brought you there?

A. To see whether any workmen are going to Williams & Clark.

Q. What would you have done if you had found any workmen going to Williams & Clark?

A. The people wouldn't do anything. They simply heard that they would come, and they wanted to verify it.

Q. Were you down at Liebig that morning?

A. I was.

Q. Did any men go to work that morning?

A. I did not see it.

Q. That was seven o'clock, wasn't it?

A. Yes.

Q. You saw a train stop there, didn't you?

A. I did.

Q. And by having obstructions placed on the track?

A. I did see it.

Q. And at whose direction were these obstructions placed on the track?

A. I don't know, because it was over when I came there.

Q. Well, who took the ties off the track at Liebig's?

A. I didn't see anyone take them off. I was quite a distance away.

Q. Well, you were there that morning with Yeager at Liebig's?

A. I was among the people.

Q. Was Yeager there?

A. He was.

Q. And weren't you one of the men that Yeager was directing that morning?

A. I didn't hear him direct any.

Q. Well, you saw that train go out of Liebig's?

A. No, not going out. Simply coming in.

Q. Well, after the obstruction had been removed you saw it go out, didn't you?

A. It went towards Chrome.

Q. Before it went towards Chrome the obstructions had been removed?

A. The people took them away.

Q. Who were the people who took the obstructions off the track?

A. The strikers.

Q. And who directed the strikers to do it?

A. I don't know.

Q. And who were the strikers that removed the obstruction?

THE COURT: Mr. Stricker, I do not want to waste the time of the Court nor the jury. I confess I cannot see the purpose of this examination about a thing that happened earlier in the day, and somewhere else. If you can give me any reason for it.

MR. STRICKER: I will in the next question.

THE COURT: I want to know your reason for it now.

MR. STRICKER: I propose to show that this man is entirely unreliable. That he has made statements within the—

THE COURT: Ask him about his statements.

MR. STRICKER: That is what I am coming to.

THE COURT: But what you have been asking about does not concern us at all, so far as I can see. Proceed.

Q. Did I understand you to say you did not know Andrew Partos?

A. I do not.

Q. Didn't you state to Andrew Partos at

Roosevelt on the 15th day of April, that a red sweater was used to stop the train?

A. I did not say anything of the sort.

Q. And didn't you say that Yeager was leading the crowd, and that he stepped in front of the train and signalled it to stop?

A. No.

Q. And didn't you tell him at the same time that the shooting by the deputies started only after one of them, that is, the deputies, had shot into the air?

A. I don't know Partos.

Q. And didn't you tell Partos at the same time that you knew of several of the strikers, of which you were one, had revolvers in their pockets?

A. I don't know of one them.

Q. And didn't you tell him that you knew a man who stood at the end of the train, who was one of the strikers, that had a revolver?

A. I didn't see it.

Q. You have a suit pending against the American Agricultural Chemical Company now, haven't you?

MR. WESCOTT: I object to that.

THE COURT: How is that competent?

MR. STRICKER: We want to show that this man has an interest in this case.

THE COURT: How? This is a case between the State of New Jersey—

MR. STRICKER: I understand that. But the success of this case comes from the success of the next case, because if it can be established in this case that a volley was fired upon an innocent number of people on that morning, of which this man claims to be one, it is certainly—

THE COURT: There could be nothing established by this case that could be used in any other case between other parties. I overrule the question.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

THE COURT: Yes.

MR. STRICKER: That is all.

NATHANIEL JACOBOWITZ, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Where do you live, Mr. Jacobowitz?
A. Lefferts street, Roosevelt, New Jersey.
Q. Were you living in Roosevelt on January 19th last?
A. Yes, sir.
Q. What was your business then?
A. I was reporting at the time of the strike.
Q. For what papers?
A. Perth Amboy paper. I was also temporary correspondent for the Newark Evening News.
Q. How far is your house, or was your house at that time from the Williams & Clark station?
A. I would judge it was about 300 yards.
Q. Where were you about eight o'clock on the morning of January 19th?
A. I was home in the house. At eight o'clock? Well, at the time of the shooting I was about the house all that time.
Q. You heard the shooting?
A. Oh, yes.
Q. Tell us what you heard about it, and saw.

MR. McCARTER: What he heard about it?

MR. COAN: What he heard and saw.

THE COURT: That is a pretty general question. That might relate to what he saw or did not see in relation to Noah's Ark. You ought to confine it to the question we are trying.

MR. McCARTER: I think we ought to know where this house is. 300 yards away is a long

distance off. Possibly he could not see anything.

Q. From your house could you see the Williams & Clark station?

A. I can see it; yes, sir.

Q. Where is the house?

A. Why, the house is located so that from my porch I could—I get a fine view of the entire scene, where the shooting took place. I can't see the factory, but I can see the whole scene, that is, the station and the track, part of the track, and I can look all the way down to Warner's practically from the position that I was standing.

Q. Did you see the eight o'clock train come in that morning?

A. Yes, sir.

Q. Where were you then?

A. I was standing on the porch when the train was approaching. The first I saw the train was when it was near Warner's.

Q. And where is Warner's?

A. About two miles from the scene of the shooting.

Q. Further toward Elizabethport?

A. Yes, sir.

Q. You saw the train come on down the track?

A. Yes, sir.

Q. What happened as it came into the Williams & Clark station?

A. Well, the train—I saw the train approach all the way from Warner's, and when it came between the Consumer's Fertilizer factory and the Williams & Clark station, it stopped about one hundred yards, I would judge, from the position that I was standing, about one hundred yards from the Williams & Clark station, it stopped the first time. And then I noticed a few men getting off and on the train. It was—just getting off; I could

just barely see their forms, and then the train started again. It didn't stop where it ought to stop, but it stopped about 20 yards in front of the Williams & Clark's. That is on the other side of the Williams & Clark's station. And then I noticed a crowd that had collected near the station and crowd that had collected near the station and about the station move slowly towards the train that had stopped. I can't remember clearly whether it had stopped entirely or was moving slowly. I judged it have stopped. That is from my memory now.

Q. Where was this crowd that you speak of located?

A. On the track, about the station, in front of the station. All had collected on the track. There is a side track running, that is, it crosses the main track, the Sound Shore track.

Q. Will you step down to this map and show us where that side track is?

A. Yes, sir. This is the side track. The switches is off—this is not the one I am referring to. It switches off and connects with the track—I don't see it drawn here, but it should have been drawn—this track runs into a side track that runs right into the Williams & Clark plant.

ONE OF COUNSEL: That is up there.

MR. McCARTER: I do not think we want counsel to identify the map.

THE COURT: If you do not understand the map do not undertake to testify from it.

MR. McCARTER: Take your seat again.

THE COURT: If you understand the map, you can testify from it. If you don't understand the map—

THE WITNESS: I understand the map according to the way the map—

THE COURT: Proceed with the examination.

Q. After you saw the strikers approach the train, what happened?

MR. STRICKER: I object. This witness has not testified that he saw any strikers approach the train.

THE COURT: No. He said he saw a body of men. You had better change that. He did not say strikers.

Q. After you saw this body of men approach the train, what happened?

A. I heard shots.

Q. Did you see where the shots came from?

A. Well, I looked in the direction from where the shots came. They were on—

MR. STRICKER: I object. He has been asked a simple question whether he knew where they came from. He can answer that yes or no.

A. I saw where they came from.

Q. Where did they come from?

A. They came from men, appeared to me to be coming from the direction where the factory is, whom I came to the conclusion immediately that they were deputies firing into the mob collected on the track.

MR. STRICKER: We move that be stricken out.

THE COURT: That is all stricken out. That—we do not want your conclusion.

A. Well, they were deputies.

THE COURT: Just state what you saw.

MR. STRICKER: I made a motion to strike out something.

THE COURT: I ordered it stricken out.

Q. Did you see those men?

A. The ones who were doing the shooting?

Q. Yes?

A. Yes, sir; I saw them before.

Q. Where did you see them?

A. Why, they were on the north side of the side track.

Q. Which side track was that?

A. The side track that runs from the Williams & Clark plant to East Rahway.

Q. And on which side of the station were they?

A. On the right—facing north, or facing—

By THE COURT:

Q. Was it east or west?

A. I thought it was north and south.

By MR. COAN:

Q. Were they on the side the factory is on?

A. Facing Elizabeth; that is, when I faced Elizabeth, they were on the right side of the station.

Q. Was that the factory side or not, of the station?

A. That is the factory side of the station.

Q. And how many men were there?

A. I don't know.

Q. Well, how many do you think there were?

MR. STRICKER: I object.

Q. What is your judgment?

MR. STRICKER: I object to that.

A. I didn't judge how many men there were.

Q. What did you do then?

A. I just kept on looking until the firing had ceased. After the firing had ceased, I ran out from my yard, I can run out to the—

THE COURT: Never mind what you can do. What did you do.

THE WITNESS: Well, I ran from my yard on to the railroad track, and there I assisted a wounded striker to Ohlott's barber shop.

MR. McCARTER: Well, I think that is immaterial.

Q. Did you know who the men were who were around the railroad station?

A. No, sir.

Q. What did they do after the firing?

MR. STRICKER: I object on the ground that this witness was not there.

THE COURT: Well, he said he could see. I will allow the question.

Q. (Question repeated by stenographer)?

A. I don't know what they did. I assisted a striker, a man I didn't know, towards the barber shop. They were at my back.

THE COURT: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. In which direction do you live from this station?

A. I live in the direction—

Q. North, south, west—

A. South from the Williams & Clark station.

Q. And what street do you live on?

A. Lefferts street.

Q. Lefferts street?

A. Yes, sir.

Q. And that street runs east and west, does it not?

A. That street runs north and south.

Q. Which side of the street do you live on, the east or the west side?

A. The west—the east side.

Q. The east side?

A. The east side.

Q. So that the porch that you were telling us about is the rear porch, isn't it?

A. The rear porch; yes, sir.

Q. Is that a big porch, or is it simply a little landing?

A. It is a porch that covers the whole rear of the house.

Q. What time did you get up on this morning of January 19th?

A. I was up at seven.

Q. Seven o'clock?

A. Yes, sir.

Q. And you took a position on the porch at eight o'clock?

A. Yes.

Q. In order to see what was going on down there?

A. I took a position. I don't know what time it was that I took a position, but I took a position before the shooting.

Q. Did you expect any shooting to be done that morning?

A. Why, no; I didn't expect any shooting.

Q. And you were a newspaper correspondent for the Perth Amboy Evening News and for the Newark News, and there was—it was your intention to report everything that was going on there, that is correct, isn't it?

A. Yes, sir.

Q. And there had been considerable going on there, hadn't there?

A. I don't know what you mean by there.

Q. Well, what I mean to say, you had been sending in items before that day?

A. Oh, yes.

Q. And things were getting a little excited around Carteret, weren't they?

A. Yes, they were.

Q. And you, as well as all the rest of the populous, expected that something was going to happen there that morning?

MR. COAN: I object to what this witness expected.

THE COURT: Strike out so much as "All the populous." He don't know anything about that.

Q. You rather looked that something was going to happen on the morning of January 19th, didn't you?

A. Allow me to answer the question—

Q. No, you will answer that yes or no. You either expected, or you did not.

A. Of course I expected something to happen.

Q. You were up a seven o'clock that morning?

A. Yes, sir.

Q. A cold morning, wasn't it?

A. No. It was a misty morning. Somewhat misty.

Q. You don't know what time the sun rises January 19th, do you?

A. No, I don't. I forget.

Q. Wasn't quite as bright as it is now?

A. No. it wasn't as bright.

Q. You went out and took a general survey of things in the morning from your back porch, didn't you.

A. Yes.

Q. And you saw through this mist a large number of men congregated at the station, that is correct, isn't it?

A. Yes, sir.

Q. Why didn't you go down to this place when you were looking for something to happen which you might report?

A. Because I was having breakfast served at the time.

Q. Oh! Well, were you having breakfast all this time?

A. Why, I was waiting before the train came in, before I could see the train, I was at the breakfast table, and I told my little brother—

Q. Never mind what you told your little brother.

A. All right.

Q. Don't you know that the psychological moment was going to arrive, or going to take place upon the arrival of that train?

A. Yes.

Q. Why weren't you down there as the reporter?

A. Because.

Q. Because what?

A. I was having breakfast served. I could see what was going on at the time when the train would come in.

Q. You were eating your breakfast when the announcement was made that the train was coming in, is that correct?

A. I was not eating it, yet. It hadn't been served.

Q. You were waiting for it?

A. I was waiting for it.

Q. At the table?

A. Yes, sir.

Q. Did you get your breakfast?

A. No.

Q. The reason why you didn't get your breakfast was that it was interrupted because of a volley of shots that you heard there; isn't that correct?

A. I wasn't interrupted by a volley of shots. I went out on the porch before the volley of shots.

Q. You stood between your duty as a reporter at that moment, in order to get the news, the climax of the strike, on the one hand, and your breakfast on the other; is that correct?

A. If I understand you correctly, yes.

Q. And you decided in favor of the breakfast, didn't you?

A. No, I did not. I decided in favor of getting the news, that is why I went out and left my breakfast.

Q. If you were anxious to get the news as a conscientious reporter, why didn't you get your breakfast at half past seven that morning, and

why weren't you at the scene of this place where the climax, as you say, was going to take place at eight o'clock?

A. Because I didn't expect it to be what it was, and from what would happen, what I expected to happen, namely, the seeing whether there was any deputies on the train, I could see that from my porch. I had a good view of it.

Q. You were going to get a story concerning a number of deputies which were expected to arrive by that train, on a misty morning, a distance of 900 feet from your back porch, is that correct?

A. Yes, that is correct.

Q. And you expected that the Perth Amboy Evening News and the Newark News would print that stuff?

A. Well, if I didn't think I could see it from where I was, I could soon have gone down there. But the view looked pretty clear to me.

MR. STRICKER: That is all.

CHARLEY RAB, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Through Interpreter Stephen F. Somogyi.)

Q. You live down at Carteret?

A. Yes.

Q. Did you live there last January?

A. On John street.

Q. Do you know where the Williams & Clark station is?

A. Yes.

Q. State whether or not you were down there about eight o'clock on the morning of January 19th?

A. Yes, I was.

Q. Do you remember the train coming in?

A. Yes, sir.

Q. What happened?

A. Well, we stood there, and when the train came in we wanted to see whether any strike-breakers were coming in.

Q. Well, what took place?

A. We stood there, and we had intended going home when the deputies came out at us and began to shoot.

Q. Where did they come from?

A. The deputies from the yard of the factory.

Q. What factory?

A. Williams & Clark.

Q. What part of the factory did they come out of?

A. From the office.

Q. When they came out what did they do?

A. When they were a short distance away from us, one began to shoot, and the others followed suit.

Q. The one who began to shoot, can you state where he shot?

A. Up.

Q. What did you do then, Charley?

A. When I saw the others run I ran towards the water.

Q. What happened?

A. And then when I was running towards the water I fell, and I was shot here (indicating).

Q. Where did he indicate?

(Witness indicates on bottocks.)

Q. What were you shot with?

A. I can't tell you, because I didn't have a chance to look.

Q. Did you see what the men who were shooting had in their hands?

A. Revolvers and guns.

Q. And how many men were there who were shooting?

A. About 25.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. How long are you in this country, Charley?

A. This is the third time that I am here.

Q. Well, how long are you here?

A. Now a year and a half.

Q. And you were one of the strikers?

A. Yes, I worked there, but I never went until that morning.

Q. And that morning you went with about hundred other men?

A. I went a short time afterwards.

Q. You went down to Liebig's that morning, didn't you?

A. No, I was not at Liebig's. I don't know what happened at Liebig's.

Q. You joined the crowd then at Williams & Clark's station?

A. Yes, that is where I stood.

Q. And how many men were with you approximately?

A. I can't say, but about 300.

Q. And some of them had sticks and clubs?

A. I can swear ten times that I did not see a single one have any.

Q. Not one striker had a club or a stick?

A. No. I saw only what happened that day. I never saw anything else.

Q. Were you there when the train came in that morning?

A. Yes.

Q. You say you saw about 300 strikers there?

A. No, I did not.

Q. Didn't you see any strikers there at all?

A. Yes. The strikers were there.

Q. And not one of your 300 strikers, or so, had a stick or a club?

A. I didn't see a single one have any.

Q. Nor a stone?

A. Nothing whatever.

Q. Nor a piece of slag or a piece of iron?

A. Nothing at all.

Q. You didn't see any ties on the track?

A. I didn't.

Q. Or any other obstruction?

A. Nothing at all.

Q. You didn't see a stick placed along the track with a red sweater or red cloth, designed to stop the train?

A. I didn't see that.

Q. How far from the station were you?

A. From the small depot?

Q. Yes, from the small depot.

A. We were standing right by the small depot.

Q. When I say the small depot I mean the little depot in front of the Williams & Clark office —or near there—so let us get that right.

A. That is the one I think of.

Q. Did the train stop once or twice before it got in—directing your attention now to the eight o'clock train?

A. Once it stopped at the small stinkfactory.

Q. You mean by stinkfactory the factory of Armour's about a mile above that, don't you?

A. The one that is along from Williams & Clark factory.

Q. You didn't see the eight o'clock train stop within 200 feet of the little station, did you?

A. It stopped at the small factory and then again at this depot at the time they were shooting.

Q. And you didn't see any strikers get aboard of the train, did you?

A. I didn't.

Q. Nor you didn't see any of the strikers get on the steps of the locomotive, did you?

A. I didn't see them because I was among the people.

Q. Do you know a man by the name of Yaeger, Julius Yaeger?

A. I don't.

Q. Who asked you to come down to this station that morning?

A. I simply went because the others were going there.

Q. And you expected there were men coming on that train to take your place in the factory?

A. No, I simply followed the others.

Q. Do you know what you went there for?

A. I don't know why I went. I simply went with the rest, because we were striking.

Q. And weren't the rest, including yourself, going to prevent any people coming by that train to take your places—even by force?

A. No, I didn't see that. I simply went there as I stated, and I was in among the rest of them and stood there.

Q. Didn't you and the rest of you go down to that station that morning for the purpose of preventing anybody from going into your plant to take your places at work?

A. Not I.

Q. You went there for peaceful purposes only?

A. Yes. I didn't want to do anything.

Q. And the 300 men didn't do anything?

A. Nothing at all. I will swear ten times to it.

Q. Ten times? All right; and you saw nobody brandishing clubs or sticks?

A. I didn't.
Q. That is of the strikers?
A. Not one.
Q. You heard no shouting?
A. Not one word.
Q. Where did those men that did the shooting come from when that took place?
A. From the factory yard.
Q. Where abouts?
A. The yard of the factory.
Q. Well, can you tell us what part of the yard?
A. The office part.
Q. Now you say you couldn't see what was going on because you were in the crowd?
A. Yes, that is where I stood.
Q. That being the case, how can you say where these men came from?
A. I saw that.
Q. Oh that you saw. Now how many men came from that gate?
A. Deputies?
Q. Well, the men you call deputies?
A. About 25.
Q. It might only be twenty, might it not?
A. No, there were 25 or more.
Q. Well, there were 25 or more.
Q. Well, there might have been forty then?
A. No, there wasn't that many.
Q. Well, it might have been thirty?
A. No, there wasn't any more.
Q. Did you count them?
A. Yes, counted them as they were coming along the line.
Q. Did you count them yourself?
A. Yes, sir.
Q. Who else counted them with you?
A. Well, I counted them all by myself.

Q. What did these men shoot with?
A. The one who shot first shot with a revolver.
Q. Up in the air?
A. Yes.
Q. How many of that 25 had revolvers?
A. I can't say how many had them; some had revolvers and some guns.
Q. How many had guns?
A. I don't know, I can't say.
Q. Did all of them have fire arms?
A. I can't tell that. Well, I don't know, I won't say.
Q. Well, how many of the twenty-five had fire arms?
A. I can't tell you that.
Q. How many of the 25 had revolvers?
A. I can't tell that either.
Q. Well, were half of them armed, half of this 25?
A. I can't say positively, because I am a married man and when this one man shot, I began to run.
Q. When the deputy fired that gun up into the air, that is the time you began to run, is that correct?
A. Yes, I was running then.
Q. You never looked back either, did you?
A. No. I had a big coat on me, and when I fell down into this water, the shots were flying around me like hail storm.
Q. I suppose there were three or four thousand shots fired? Was there that many?
A. I don't know how many, I didn't look.
Q. Well, you heard, didn't you?
A. Yes, I heard.
Q. And the bullets were whistling by your ears like a hail storm, isn't that correct?

A. No, simply fell by me.
Q. All the bullets fell by you?
A. The shots.
Q. The shots. Were they big shots or little shots?
A. Ordinary shots.
Q. And did the shots that dropped on you seem to come down like rain, or did they appear to be directed at you?
A. Simply fell all over me.
Q. As though they dropped down from heaven?
A. Yes, something like that. I can't very well explain it to you.
Q. Now all this happened to you on the ground; is that correct?
A. Yes. I jumped up after because I felt a pain.
Q. But it was while you were on the ground that the shot—the shots—were falling upon you—all around you?
A. I surely had it in me because I felt it.
Q. But the shots that you say were coming from every direction on you—were those coming while you were on the ground?
A. Yes, after I fell.
Q. And the shot that entered your posteriorm was a small one, wasn't it?
A. A small shot.
Q. Did you preserve it?
A. They took it away from me.
Q. Who took it away from you?
A. Galjo took it away.
Q. Who is Galjo?
A. A workman here.
Q. You don't mean—is he here?
A. He is here.

Q. When did you receive that shot?
A. As I was running down from the track.
Q. Down an incline?
A. Yes.

MR. STRICKER: That is all.

MR. COAN: That is all.

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STEPHEN BAKAC, a witness produced on behalf of the State, being duly sworn, according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

(Through Official Interpreter.)

Q. Where do you live?
A. At Carteret.
Q. Where did you work last January?
A. Williams & Clark.
Q. Did you go on strike in January last?
A. I did.
Q. Do you remember the 19th of January, the 19th of January?
A. Yes.
Q. Where were you on the morning of that day, at 8 o'clock?
A. At home.
Q. Were you down at the Williams & Clark depot that morning?
A. I was.
Q. At what time?
A. At eight.
Q. Did you see the train come in?
A. I did.
Q. What happened, what did you see happen when the train came in?
A. They began to shoot.
Q. Who began to shoot?
A. The ones who came out from the factory.
Q. Did you see them come from the factory?
A. I did. I was standing by the depot.
Q. Where were the men who came from the factory when you first saw them?

A. In the factory at the office, Williams & Clark.

Q. Did you see them at the office?

A. I did.

Q. How many men were there there?

A. I don't know how many, but quite some.

MR. STRICKER: Didn't he say there were many?

THE INTERPRETER: Yes, you are right. Correct that.

Q. Can you say nearly how many?

A. I didn't count them; there was about twelve or fourteen.

Q. Where did they go when they left the office?

A. When they went out of the office, they went straight to the depot.

Q. What did they do; did they go fast or slow?

A. They went fast.

Q. Did you see them do anything?

A. Why wouldn't I see them. I did.

Q. What did you see them do?

A. They were shooting.

Q. Where were they when they commenced to shoot?

A. By the train.

Q. How close to the train?

A. About three or four steps.

Q. On which side of the train—Williams & Clark side, or the other side.

A. On Williams & Clark's.

Q. What kind of arms did they have; what did they shoot with?

A. With guns?

Q. What kind of guns, revolvers or shot guns, or what kind?

MR. STRICKER: I object to that if your Honor please.

THE COURT: Yes, ask him what kind if you want to know.

Q. What kind of guns?

MR. STRICKER: I object to that. I withdraw my objection.

A. Guns about that long (indicating).

MR. STRICKER: How long does he indicate?

A. About that long (indicating).

(Indicating about three and a half feet.)

Q. Did you see where the guns were aimed when these men were shooting?

A. At the people.

Q. What people?

A. The people who were standing by the depot, they shot into them.

Q. What did you do when they shot?

A. I didn't do anything, I was standing.

Q. What happened next?

A. When he began to shoot I ran, and he shot me in the leg.

Q. Whereabouts in the leg were you shot?

A. Here in my foot (indicating), from the instep towards the toe, and made a cut in the toe.

Q. What were you doing at the time you were shot?

A. I was going home; I was in water up to my knees.

Q. Did you—was the bullet taken from your leg, the bullet with which you were shot?

A. Dr. Jacoby had to come and take it out; he died.

Q. Do you know what become of the bullet?

A. After he took it out I don't know what became of it.

Q. Did you see it?

A. I did.

Q. What kind of a bullet was it?

MR. McCARTER: Is that material, your Honor. It seems to me the size of the bullet that hit this man would be immaterial in this case.

THE COURT: I can't see why you are trying his case.

MR. STRYKER: We think it may be material. It has a tendency to show who fired the shot that day and as tending to show what occurred. This was a joint action by all these men that came out from the factory.

THE COURT: Do you propose to show then that everybody was shot there that day and just how he was shot, and he was defending himself, or are you going to go into the trial of this case?

MR. STRYKER: The question now pending before the Court is to the character of the bullet.

THE COURT: I cannot see what this has to do with this case, Mr. Stryker. This man testified he was shot by somebody coming out from the factory. Is it important what he was shot by?

MR. STRYKER: Of course if it is conceded he was shot.

THE COURT: I do not say it is conceded. Do you object to the question, Mr. Stricker?

MR. STRICKER: Yes, sir; I do.

THE COURT: I overrule it. Proceed then.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Do I understand that he was standing—were you standing on the station platform when you saw the deputies in the office?

A. I was standing at the depot?

Q. And you saw men in the office?

A. I did.

Q. Was the gate open or not?

A. They were standing in the office, and going about in the factory.

Q. In the office?

A. In the office.

Q. Was the gate open or shut?

A. Open.

Q. The gate was open? How high is that fence?

A. It is about three meters high.

Q. Now you were on strike?

A. Well, they chased us out from Liebig's; we didn't do anything.

Q. Who chased you out from Liebig's?

MR. WESCOTT: I object on the ground it is immaterial.

THE COURT: I think I will allow that question.

A. The men from Williams & Clark chased us out.

THE COURT: He has answered the question. Just stop there.

Q. I mean strikers?

A. Yes.

Q. Who told you to go down to the station that morning?

MR. WESCOTT: I object on the ground it is immaterial. If your Honor please, all this testimony about this strike and these men being strikers has nothing to do with this case.

Q. (Repeated by stenographer)?

THE COURT: He hasn't said anybody told him to go down there.

MR. WESCOTT: I take decided issue with the learned Attorney General to the fact that there was a strike there, and what was going on there, not being—

THE COURT: Suppose you ask him first did anybody tell him to go to the station.

MR. McCARTER: Very good, sir.

Q. Did anybody tell you to go to the station that morning?

A. No, the people went there and I went also.

Q. You followed the crowd?

A. After the people. Wherever they went I followed.

Q. Yes. How many were down there.

A. There was over 800.

Q. Over 800. Did you go down there to see if there was any strikebreakers on the train?

A. We went to look.

Q. To see if there was any strikebreakers on the train?

A. Yes. And I simply went to the depot, and this misfortune happened.

Q. And your object in going to the depot was to see if there was any strikebreakers on the train?

A. Yes, sir.

Q. Did you notice some log of wood across the track?

A. I didn't see it.

Q. You didn't see it. Did you notice a red flag or red jersey hanging up on the track to stop the train?

A. I wasn't there when this happened.

Q. Where was the train standing when you got there?

A. It went above the station, above the depot.

Q. It went above the depot before you got there?

A. I wasn't there when that happened.

Q. The train had passed—the engine had passed the station before you got there?

A. Went past the depot towards Carteret.

Q. Before you got there?

A. The train had passed when I got there.

Q. And after you got there you saw the strikers in the office—the deputies in the office?

A. Well, when the train came, they came over there and started to shoot. I didn't see any red flag.

Q. Was the train between you and the factory?

A. The train was going towards Carteret and they were by the train, on the other side of it.

Q. Was the train between you and the factory?

A. Yes.

Q. How near to the train did you stand?

A. I was about ten steps away from the train.

Q. Ten steps away from the train. Did you see under the car or over the car?

A. Under the car.

Q. Under the car, and all that you have testified about you saw in that way?

A. Yes, that is how I saw it.

Q. Were any of the strikers on the factory side of the railroad?

A. There was no one there.

Q. No one there at all. As soon as you heard the first shot you ran, didn't you?

A. I ran at once.

Q. And the next thing you knew you were shot in the instep?

A. When I was shot I was running across the farm and through the water, on account of the pain.

Q. And you were running away from the place where the shot came, as you thought?

A. I was running away.

Q. You were running away from the deputies?

A. I was running away.

Q. And you were shot in the instep, and the bullet came out of your toe?

A. It didn't come out, it entered at the instep and it got lodged in the toe, and it was cut out by the doctor.

Q. From the toe?

A. From the toe.

Q. In the right foot?

A. In the left.

Q. And the train was between you and the deputy?

A. Between the deputy.

Q. How long have you been in this country?

A. Three years.

MR. McCARTER: That is all.

GEORGE BODNER, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRYKER:

(Through the Interpreter.)

Q. Where do you live, George?

A. At Carteret.

Q. Were you down at the Williams & Clark station on the morning of January 19th?

A. Yes, at the small station.

Q. What time were you there?

A. At seven and eight o'clock.

Q. Did you see the train come in, the eight o'clock train from Jersey City?

A. Yes.

Q. What happened at about the time the train came in?

A. We were standing there at the time the 8 o'clock train; we stood there from the time the 7 o'clock train came in; when the 8 o'clock train pulled in the gate opened and the deputies came out of the office.

Q. What office?

Q. What office?

A. Williams & Clark's office.

Q. How many deputies were there? About how many?

A. I can't say positively; I think about 35 or 40.

Q. Where was the train when you saw the deputies came out of the office?

A. Well, it happened like this, when the train stopped there they got there.

Q. Where did the deputies go when they left the office?

A. They came straight towards us.

Q. What did you see them do?

A. I saw them have revolvers, when they came, and guns.

Q. Did they do anything with the revolvers or guns?

A. Yes, when the train stopped one of them shouted, "Shoot the son of a bitch." And they started to shoot all over. I didn't have a chance to look at the rest of them, I started to run.

Q. Where was the train when they started to shoot?

A. When they began to shoot, the train had started.

Q. Did you see which way the guns or revolvers were pointing when they started to shoot?

A. I didn't have a chance to look. Simply they were shooting and they shot me.

Q. What were you doing when you were shot?

A. I was running away, and one man also fell by me. He said—

MR. McCARTER: Never mind.

Q. Where were you shot?

A. Here in my arm (indicating left arm).

MR. McCARTER: Which arm? On the right wrist?

THE INTERPRETER: He indicates above the wrist.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Did you see—You saw these deputies as you denominate them coming down out of the office in the Williams & Clark plant?

A. Yes, sir. I saw them. The train was a distance away then; when the train stopped we went to look at the train and of course we were told strikebreakers would come on it, and we went to see whether it is so or not.

Q. And if you found any strikebreakers there, you were going to prevent them from going into the plant—that is you and your associates?

A. That is our intention, because we had a meeting every afternoon; if they wouldn't go away peaceably when we told them we were striking, we would get at them so they wouldn't go to work in our places.

Q. Then you were going to resort to force, if necessary?

A. There was nothing said about force.

Q. Well, I did not ask you whether it was said. The fact is—

MR. WESCOTT: I object to it.

THE COURT: It is only what he said.

MR. STRICKER: I want to show—

THE COURT—You have asked your question and he has not answered.

Q. Whether it was said or not, that was your intention.

MR. WESCOTT: That is objected to.

THE COURT: I will allow that question.

A. What? To spit on them?

Q. No. Prevent them from going in and take your places by force.

A. Well, not with force. If they did not want to obey us we would have let them in.

Q. Were you there to command them not to go in there?

A. There wasn't an angry man there.

Q. No. But you were there to prevent the strikebreakers from taking your places by force, if necessary?

A. Well, if he had gone in by force, it was our intention to simply spit on them and let them go in.

Q. Is that what had been decided at a meeting the day before, or a few days before?

MR. COAN: I object.

Q. A meeting which you attended.

THE COURT: We cannot try that. You can only try what this man himself had in his mind, and what he intended to do.

Q. Well, did you determine to spit on some of these people, as the result of what had happened at the meeting which you had attended?

MR. COAN: I object.

THE COURT: I will allow that.

A. That is what we talked about.

Q. What time did you get up on the morning of the 19th?

A. About six o'clock.

Q. Where did you go?

A. I was going about in Carteret. Well, when those came down we went down with them.

Q. Had you been to Liebig that morning?

A. I was not.

Q. Well, how long were you at the Williams & Clark station before the train came in?

A. About fifty minutes.

Q. And what were you doing there for the fifty minutes?

A. We were conversing.

Q. Did you see anybody with a stick or a club?

A. I did not.

Q. Anybody with a stone?

A. No.

Q. Or pieces of cinder or slag?

A. I did not.

Q. And you didn't see anybody with a piece of iron?

A. No.

Q. And none of the strikers had any weapons of any kind, did they?

A. I didn't see anyone have anything.

Q. You did not see the train obstructed by railroad ties, about 200 feet north of the little station?

A. I didn't see that, because we were about two or three hundred there at the time, and I was standing on the Williams & Clark side.

Q. And you didn't see a pole stuck into the track with a red sweater or a cloth?

A. I didn't see it. I didn't pay any attention to it. We were conversing the other side.

Q. Well, the fact is that such a thing never happened.

A. Nothing at all happened then. We were simply conversing.

Q. Do you know Julius Yeager?

A. I know him from the time the strike began.

Q. And you didn't see him at that place on the morning of the 19th, did you?

A. No, I did not.

Q. And you did not see him run up the track and wave to the engineer and stop the train, did you?

A. I didn't see Yeager at all that morning.

Q. The Williams & Clark office is on level ground, isn't it?

A. It was on a platform.

Q. Well, is the platform elevated from the ground?

A. The office is placed on street.

THE INTERPRETER: That is the expression he uses.

MR. STRICKER: On stilts, I suppose he means.

A. About three feet high.

Q. And there is a step leading up to that office?

A. One step. A bridge.

Q. And you saw these men that you saw, deputies, coming down that bridge from the office that morning?

A. Yes.

Q. And you say there were about 35 of them?

A. I told you before that I didn't know positively but that is my opinion.

Q. And the first man that you saw shoot shot in the air, didn't he?

A. I can't tell that. I can't tell whether he shot in the air. He simply hollered, "Shoot, son-of-a-bitch," and then he began to shoot.

Q. And then you ran?

A. Yes, across the water.

Q. And you don't know how he shot?

A. I didn't see it. I didn't have a chance to look.

Q. Could you tell how many of these 35 men had revolvers?

A. I can't tell how many had revolvers and how many had guns.

Q. Did they all have firearms?

A. Firearms could be seen by each one.

Q. How many had guns, or shotguns or revolvers?

A. I can't say.

Q. Well, did each have some firearm that you think?

A. Firearm, and clubs.

Q. Yes, but you were not near enough to be positive—you would not want to be positive that they all had firearms, would you?

A. I would if I knew, but that I don't see it.

Q. Then you don't know?

A. I know that there were revolvers and guns there because I saw them.

Q. But the fact is you cannot tell positively whether all the deputies, as you call them, were armed?

THE INTERPRETER: I cannot put that "armed."

MR. STRICKER: Well, had weapons or firearms.

A. I can't tell that about each one.

Q. Show us the place again where you were shot, won't you?

A. There is go in, and doctor take out there. It was a shot.

Q. Do you know what position your left arm was in as you ran away?

A. I felt as though something had struck it.

Q. Yes, but what position was your arm at at the time you were shot?

A. I was running like this (indicating arm hanging).

Q. Stand up and indicate, please.

A. I was running like this. I can't say just exactly how I held it.

Q. You were then between the train and the deputies, were you not, running?

A. Yes. Between the train and the deputies. I ran in front of the engine.

Q. Who was the nearest man to you that you were conversing with at the time when this took place?

A. I don't know the names of them, because they were from Chrome.

Q. Are they here this morning?

A. I don't know.

Q. Well, you have been outside with the other witnesses, haven't you?

A. Yes.

Q. Do you recognize any of the men out there that you were speaking to, or conversing with, at the time the train came in?

A. I couldn't very well recognize them. I didn't speak very much with them.

Q. How long have you been in this country?

A. Three years.

Q. Did you see the train stop that morning before it came into the station?

A. Yes, it stopped at the depot.

Q. Didn't stop before though, did it?

A. Stopped in front of the other factory.

Q. No. I mean it only stopped at the Williams & Clark station, where you stood, so far as you could see?

A. A little before it.

Q. Well, how far from it?

A. About six metres.

MR. STRICKER: Well, what is that, what is a metre?

THE INTERPRETER: A metre is about 39 inches.

Q. That is the only stop you saw that train make?

A. Only once.

Q. And before that train had stopped, the deputies had already come out of the office?

A. They were there then.

Q. How long were they there before the train came in the whole thing took about three minutes.

A. About three minutes. Before the train came in?

Q. You were on the factory side of the track, weren't you?

A. Yes.

Q. You were on the Williams & Clark side of the track, weren't you?

A. Yes, there.

Q. And you had your back to the factory, didn't you?

A. Somehow with the side to it.

Q. And how many men were on that side of the track?

A. About half.

MR. STRICKER: That is all.

PAUL BAVIK, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through Interpreter, Stephen F. Somogyi.)

Q. Paul, where do you live?

A. At Chrome.

Q. Were you living at Chrome in January last?

A. Yes.

Q. Do you know where the Williams & Clark station is?

A. I do.

Q. State whether or not you were down there on the morning of January 19th last?

A. I was there at the time of the trouble.

Q. What did you see there?

A. I saw the people going on the track, and I saw a bunch in front of the train.

Q. What people were on the track?

A. All kinds of workmen.

Q. What were they doing on the track?

A. I don't know, because I didn't have a chance to go there before the shooting.

Q. Where were you when the shooting took place?

A. I was going down the track to see what the people were doing, but did not get a chance to get there before that.

MR. STRICKER: One moment. We object to that. We understand he was not there.

THE COURT: He said he was going down the

track. I think you had better find out whether he got there, or got where he could see.

Q. Did you see who did the shooting?

A. I did. The deputies were shooting.

Q. And where were they shooting from?

A. They were shooting from Williams & Clark's plant?

Q. How far away from the Williams & Clark plant were they?

A. About 600 steps. I am not positive.

Q. Which way were they going?

A. The deputies came out from Williams & Clark's to the station.

Q. Where were you?

A. I was going down the track.

Q. How far away were you from the station?

A. About 20 or 25 steps.

Q. How many shots were fired?

A. I did not count them. They all shot at once.

Q. Were you shot?

A. Yes.

Q. Where?

A. In my left hand, and two in my left leg.

Q. Show us in your hand where you were shot?

A. Right in here (indicating side of the hand).

Q. And where were you shot in the leg?

A. Right in the back there (indicating calf of the leg).

Q. Below the knee?

A. Yes.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. How long have you been in this country?

A. 15 years.

Q. And how long have you lived in Roosevelt?

A. I always lived there.

Q. And were you one of the strikers on the morning of the 19th?

A. I was among the strikers, yes.

Q. What time did you get to this place at which you say the shooting took place?

A. It was around eight o'clock.

Q. And where did you come from?

A. I came from the Armour Company.

Q. Was the train there then?

A. The eight o'clock train was in the station, yes.

Q. And where were you when the eight o'clock train was in the station?

A. I was on the track going down.

Q. How far from the station?

A. I stood 25 feet about.

Q. North or south of it? That is, towards Elizabeth or towards Chrome?

A. Towards Chrome.

Q. Well, then, you had got by this crowd of strikers?

A. No.

Q. Well, were you on the track—did you come from the Armour side of the same track that was used by the eight o'clock train?

A. Yes, on the Central line.

Q. Where did that train pass you?

A. It stood there when I went there.

Q. Well, is the Armour plant north or south of the Williams & Clark?

THE INTERPRETER: He will not understand north and south?

MR. STRICKER: Well, fix it so he will understand.

A. Well, it is towards Chrome. Alongside of the Copper Works.

Q. Were you coming towards Williams & Clark's then?

A. I was going towards Williams & Clark to look at the people.

Q. Who came with you?

A. Several came with me. I don't know the names.

Q. And did you go from Liebig's then?

A. Yes. We all went up, some of them from Liebig's, some of them from the Copper Works.

Q. You were at Liebig's at seven o'clock, weren't you?

A. I was at Armour's, on the seven o'clock train there.

Q. How far is Armour's from Liebig's?

A. About two thousand steps.

Q. Weren't you at Liebig's when the seven o'clock train came in the station?

A. No, I was not.

Q. Did you come up from Armour's with Yeager?

A. No, I didn't see him.

Q. You didn't see him at all that morning?

A. No.

Q. You didn't see him at the Williams & Clark station either, did you?

A. I didn't see him at all. I never knew him. I saw him at the time I was in the hospital.

Q. Julius Yeager?

A. Yes.

Q. You saw him at the hospital?
A. Yes, he came to visit me in the hospital.
Q. And you were a stranger to him?
A. Yes, I was a stranger.
Q. And did he talk to you about this case and the coming trial in the hospital?
A. He didn't say anything to me.
Q. Just came there and looked at you and walked out again, is that it?
A. Yes, he simply looked at me and went away. Didn't say anything to me.
Q. How do you know it was Yeager?
A. I know from that time.
Q. Have you seen him since that day?
A. Since that time, yes.
Q. And spoken to him?
A. I did.
Q. About this case?
A. Not of this.
Q. About your own case?
A. Yes, we spoke about work conditions.
Q. And not about this case?
A. No.
Q. Nor your suit against the Chemical Company?

MR. WESCOTT: I object.

THE COURT: That is not competent.

Q. How long was that train in the station before it pulled out?
A. I think it took about ten minutes.
Q. One more question about the hospital. Who was with Yaeger when he called on you there?
A. Mr. Charles Carlos.
Q. Mr. Henry Carlos?
A. Yes.
Q. Is he in court here?

A. Yes.
Q. Where is he?
A. I don't know. I don't see him.
Q. Isn't that the gentleman right here (indicating)?
A. That is Mr. Carlos (indicating).
Q. And didn't Yeager and Mr. Carlos ask you about this shooting, and about the train, and about the deputies?
A. They did not. They simply examined me in the places where I was shot.
Q. And Mr. Carlos nor Mr. Yeager has not spoken to you about the shooting since, have they?
A. They did not say a word. They simply looked to see where I was shot.
Q. And since that day that they saw you in the hospital neither Mr. Yeager nor Mr. Carlos has had one word of conversation with you regarding as to what happened that morning at that station?
A. Simply looked at me. Yes, we spoke once
Q. When?
A. I can't say.
Q. About this case?
A. It was not about this case. They simply asked me where I was shot.
Q. And that is all?
A. Yes.
Q. Didn't ask you who shot you?
A. I couldn't even say.
Q. Didn't ask you when you were shot, or under what circumstances you were shot?
A. They asked me when and how I went over there.
Q. Who asked you?
A. Mr. Carlos asked me that.
Q. Was that at the hospital?

A. No.

Q. Was it since you have come out of the hospital?

A. Since then.

Q. Well, could you talk to Mr. Carlos without an interpreter?

A. No.

Q. And Yeager was the interpreter?

A. Yeager was the interpreter.

Q. How many men did you say you saw coming out of the Williams & Clark office?

A. The deputies, about 25 or 30.

Q. I suppose they were all armed?

A. Yes, they were. Some held guns and some revolvers.

Q. How many had guns and how many had revolvers?

A. I don't know. I could not count them. I simply turned around.

Q. You turned around before you saw any shots fired?

A. At the time that the first shot was fired I turned around immediately, and I began to run.

Q. That shot was fired out of a revolver, wasn't it?

A. I don't know, because I was not near enough to it.

Q. When those deputies came from Williams & Clark's, the train was already standing in the station; that is correct, isn't it?

A. Yes.

Q. And how long had it been in the station?

A. The entire stop took about ten minutes.

Q. You were one of the strikers, weren't you?

A. Yes. I was among them.

Q. Were you a striker from the outside?

A. Yes.

THE COURT: Mr. Stricker, you have asked him that question before, and he testified the very first thing on cross examination that he was one of the strikers. He said he was here 15 years and you asked him if he was not one of the strikers, and he said yes. We do not gain anything by repeating that.

Q. Had your life been threatened if you went to work in that plant?

MR. WESCOTT: I object.

THE COURT: Why is that competent?

MR. STRICKER: That might be competent as to the question as to whether this is an involuntary witness or not, or whether he has told us everything about this affair.

THE COURT: Well, that question you have asked him does not give us any light on that subject.

MR. STRICKER: That is on account of the answer that comes.

THE COURT: I overrule the question.

MR. McCARTER: That is a difficult question and it seems to me—I would like to be heard for a moment. It seems to me it is material in this controversy as to what the status of affairs was just anterior to this melee. Now, supposing that it were true that this assembly of three or four hundred men there at the very time of this shooting had threatened this man that if he went into that factory to work he would be shot, and suppose that attitude of these men, these strikers, was known to the deputies, is not that important?

THE COURT: This does not prove that at all.

I overrule the question and you may take your exception. Proceed.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Did you see any ties on the track that morning?

A. I did not.

Q. Do you know Andrew Partos?

A. I do not.

Q. Do you know Julius Yeager?

A. I do now.

Q. Do you know who did put ties on the track that morning?

A. I know nothing at all about it.

Q. Didn't you have a conversation with Julius Yeager, on the 12th day of May, in which you stated that you knew the men who put the ties on the track, and also the men who broke the windows, a few days previous to the 19th of January, at the works of Williams & Clark?

A. No. I knew nothing at all of it.

Q. And didn't you, in that conversation, say that you knew who the men were, but that you would not disclose them, and that if pressed for their identity, that you would say that Bartyi Kalman, one of the deceased, was the one?

A. I did not.

MR. STRICKER: That is all.

ANTON SANTI, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Through Interpreter Stephen F. Somogyi.)

Q. Where do you live?
A. Carteret.
Q. Did you live there last January?
A. Yes.
Q. Do you know where the Williams & Clark station is?
A. I do.
Q. Were you down at that station on the morning of January 19th last, about eight o'clock?
A. Yes.
Q. What did you see there?
A. I didn't see anything, because I was going home from another factory.
Q. What factory were you going home from?
A. The one by it. I don't know the name of it. A small factory.
Q. The one nearest to Elizabeth or the one nearest to Chrome?
A. Towards Elizabeth.
Q. How did you get from that factory?
A. We were going home along the track.
Q. Had you gotten as far as the railroad station?
A. Yes; when we came over there they came there.
Q. Who came there?
A. The strikers.
Q. How many strikers were there?

A. I don't know.
Q. Where were the strikers?
A. On the track.
Q. Near the station?
A. They were by the small depot.
Q. How many?
A. I don't know.
Q. Did you see or hear any shooting?

MR. STRICKER: I object. I think this witness ought to be directed to say what occurred.

THE COURT: Yes. It is rather leading, Mr. Coan.

Q. State what took place there?
A. I didn't see anything happen over there except that the train stopped. I was very far away.
Q. Well, when the train stopped, where did you go?
A. I was standing on the track, on the edge.
Q. And how far away from the train?
A. About fifty steps away from the train.
Q. State whether or not anything happened to you?
A. Yes. At the time they were shooting, I was shot.
Q. What shooting was that?
A. They were shooting from the factory.
Q. Who were shooting from the factory?
A. I didn't see who was shooting. I ran.
Q. Where were you shot?
A. My neck here (indicating right side behind the ear).
Q. Turn around and show the jury where that was.

MR. McCARTER: I object. What possible use is that?

THE COURT: Well, what possible use was it for you to cross examine this witness and have him show his arm, or the other witness?

MR. McCARTER: Because he had testified that a deputy had shot him, who was behind him, and we thought it very material that he was shot in the front of the arm. But where this man was shot, he has not testified who shot him. He said he didn't know anything about him.

THE COURT: He said the shots came from the neighborhood of the factory. It might be important whether he was shot in the back of the neck or the front. I will allow the question.

A. Here in my neck. You can't see it on account of my clothes.

THE COURT: You had better have him describe the wound so as to get it on the record. Let him describe what part of his body was struck, where it went in, and where it came out. He can tell us about that.

A. It entered in the back of my neck here, and came out a little above the place of entry.

Q. Did you see the man who shot you?

A. I did not, because I was running.

Q. Where were you when you first heard the shooting?

A. I was standing at the track there, I was running away.

Q. Where were the men who were doing the shooting?

MR. McCARTER: I object to that; he didn't see the men shooting.

THE COURT: No, I do not—

MR. McCARTER: The state ought not to try the case this way.

MR. COAN: He said he seen a single man who shot him as he was running, at the time.

MR. McCARTER: He says he didn't see anybody shooting.

THE COURT: I think you may get his testimony out.

Q. Did you see anybody shoot?

A. I didn't. I couldn't see across the people.

CROSS EXAMINATION:

By MR. McCARTER:

Q. You had not been a striker, had you?
A. I was not.
Q. The strikers asked you to remain there, didn't they?
A. Well, when we came simply stood in front of us.
Q. Didn't you walk along the track, and didn't the strikers ask you to stop, and make one of their crowd?
A. Nobody asked me anything. They got in front of us and asked us to be with the others.
Q. Who did.
A. The strikers.
Q. Was anybody with you when they asked you to be with the others?
A. There was a man with whom I was in the other factory.
Q. The strikers asked both of you to stop and stay with the others?
A. They simply got in front of us and didn't let us go. They didn't say anything to us.
Q. Now as soon as you heard a shot, you ran?
A. I ran immediately.
Q. Did you see the deputies come out of the Williams & Clark plant?
A. I saw them come out.
Q. Did they come out of the fence, or were they already out?
A. They came from the office when we came down.
Q. About how many?
A. I don't know, I couldn't count them.
Q. What is your best judgment?
A. There were about twenty or twenty-five.

Q. Where was the train at the time they came out from the office? At the station?

A. On the track by the factory.

Q. Was the locomotive down by the station?

A. Not then; it wasn't quite by the station then.

Q. Had it stopped?

A. It did.

Q. Had it already stopped?

A. It had not.

Q. Were there some strikers on the factory side of the railroad?

A. There were none there.

Q. None on the factory side at all?

A. Only on the track.

Q. On the track?

MR. McCARTER: That is all.

Whereupon, at 1 P. M., a recess was taken until 2 o'clock P. M.

AFTERNOON SESSION, 2 P. M.

JOSEPH BUCKLEY, recalled on behalf of the State, further testified:

DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Mr. Buckley, what did you say, if anything, in explanation to Mr. Tessitore about his dying? His consciousness he was going to die—his realizing he was going to die?

A. Do you mean when we started to take the statement?

Q. Yes, any time? Was there anything said to him about realizing that?

A. I used the word realize in Italian, I said; and he said, what does this mean?

Q. He asked you what it meant?

A. Yes. What does it mean.

Q. Was he very weak at the time?

A. Yes, he was weak, yes. I said, "Are you satisfied that you are going to die?

Q. Are you what?

A. Are you satisfied; I used the word in Italian satisfaat that you are going to die; if you are satisfied you are going to die.

Q. Is that what you put to him?

A. Yes, sir.

Q. What did he say?

A. He bowed his head then, just shook his head that way.

MR. McCARTER: What?

A. Just bowed his head up and down.

Q. Was there anything said to him about—or did he say anything to you about informing his family?

A. Not while the statement was being taken, it was while I had a personal talk with him.

Q. When was that?

A. He appeared so weak there that I asked him—

THE COURT: When was that, before or after the statement?

A. Why it was while Mr. Eaton was writing the beginning of this statement. "That I, John Jones" and so forth, that I ask him, "Is there anything you want." If he wanted an orange? He said, "No, I would like to have a little water." And I asked the doctor if I would get a little water, and the doctor said he couldn't have it, and I said, "Is there anything else I can do for you;" and he said, "Can you read and write Italian?" I said yes. He said, "Write a letter to my father," and gave me his father's name. I wrote it on a piece of paper, the town and province. I think he told me his father's name was Frank Tessitore. I can't remember the name, because I haven't it with me. It was in the Province of Caseito. The first name I am not positive; I think it was Frank, Francesco, and after a little while—after the statement had been completed, he asked me not to write to his father that the boss of his house—I took that to be where he was boarding—

MR. McCARTER: Not what you took to be.

A. (Continued.) That his boss would send him word, and I asked him if he wanted me to notify his sister if he had a sister, because I had heard he had a sister. I said, do you want me to notify your sister. She can come up and see you before you are gone, and he said "No, I haven't

got anyone here, only my friends—" I think he said down in Perth Amboy, I am not sure, or Carteret.

Q. And do you recall whether he told you when he wanted you to send that letter?

A. He wanted me to send the letter. He said, "Just send the letter and break the news, or send my father a notice.

Q. When did he want you to send it, did he say?

A. He didn't say just when, but by his conversation—

MR. STRICKER: We object to that.

Q. Did he say anything which indicated to you when he wanted this letter sent?

MR. McCARTER: I object. I don't think the witness can be brought back here and asked to cover up any deficiency, and then asked whether he said anything that indicated it.

THE COURT: I think that objection is correct.

Q. What if anything did he say to you as to when he wanted this letter sent?

A. We were talking about him dying. I said to him, "I will send for your sister before you are gone," and he said "No, I have no sister here." And I said, "Have you any friends"? And he said, "Yes, down in Perth Amboy." But I didn't ask him when he wanted it and he didn't say when he wanted the letter sent. He just asked me would I do him a favor and send word to his father.

Q. Now did you hear Dr. Roach tell him anything?

A. Dr. Roach spoke to him, but what he said to him I didn't hear.

Q. Did you translate anything from Dr. Roach to him?

A. Yes.

Q. What?

A. Dr. Roach said he was going to die. I told him that.

Q. Did the doctor request you to tell him?

A. I am not sure whether the doctor requested me or the Prosecutor of Union county requested me. But the doctor said he was going to die, and I told him.

Q. You testified to that yesterday?

A. Yes, sir.

Q. Now did he say to you that he had been informed—that he couldn't live?

MR. McCARTER: I think that is very objectionable.

THE COURT: Yes.

Q. (Continued.) And fully realizing that he couldn't live and was soon to die, that he wished to make a statement?

MR. McCARTER: I object to that question.

THE COURT: I think it is leading. I will have to rule it out.

MR. WESCOTT: How?

THE COURT: I think that is a very leading question.

Q. You said yesterday that he made and signed a certain statement that was shown to you?

A. Yes.

Q. Now did he state as appears in that statement, this language: "I, Alesandro Tessitore having been informed that I cannot live and fully realizing that I cannot recover and am soon to die,

do hereby solemnly and sincerely affirm and declare to the truth of the facts which appear in the statement''?

MR. McCARTER: I object to that.

THE COURT: I think I will overrule that.

MR. WESCOTT: If Your Honor please, this witness says that this deceased man made certain statements to him.

THE COURT: He testified yesterday that he made certain statements to him which were reduced to writing, and read to him.

MR. WESCOTT: Yes.

THE COURT: And that he thereafter signed them.

MR. WESCOTT: And he said those statements were true.

THE COURT: Yes, he said that of course, but I do not think it is necessary to go over it today.

MR. WESCOTT: Your Honor, that would necessarily compel us to resort to the writing, don't you see?

THE COURT: No. I think I will adhere to my ruling.

Q. Did he say anything to you in the course of your conversation on that occasion about his realizing he was done with this world, or anything of that sort?

MR. STRICKER: We object to this because it is leading.

THE COURT: Why?

MR. STRICKER: Because it is leading.

THE COURT: I don't think so, I will allow that question.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. (Repeated.)

A. Do you mean while the statement was being taken?

Q. At any time there?

A. Yes.

Q. What did he say?

A. I told him to be careful to tell the truth, to be conscientious, it was very serious and he said, "Yes, I know I am past this world."

Q. He said what?

A. He said, "I know I am past this world."

Q. After he made that statement was it, that he signed this declaration?

A. Yes, sir; it was after he made this statement.

Q. How soon afterwards?

A. No, that was while Mr. Eaton was taking down the first part of it, that we were having this conversation.

Q. Soon after he made that declaration he was done with this world, he signed that paper, was it, or was it not?

MR. McCARTER: I object to that question on the ground it is leading.

THE COURT: I will allow it, if that is the only objection to it.

Q. (Repeated by stenographer.)

A. It was.

Q. That is you say he signed the paper which was shown you here yesterday soon after he made this declaration he was through with this world?

A. Yes.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Mr. Buckley, why did you come back here today?

A. The Chief informed me that he wanted me here, Chief Calatain, of our office.

Q. Had word been sent from New Brunswick for you to come up?

A. Why, I don't know whether word was sent or not. Chief Calatain told me to come down here, that I was wanted here.

Q. Did you get word to come down here?

A. Yes, sir.

Q. Have you talked to Mr. Eaton since you have been back here?

A. I came down with Mr. Eaton.

Q. Talked with him on the way down about the matter?

A. About this case?

Q. Yes.

A. Oh, yes; we spoke about the case.

Q. And since you have been back here you have talked with Mr. Stryker?

A. I don't know who the gentleman is. I spoke to the gentleman there that is leaning against the post.

Q. Against the post, Mr. Stryker?

A. Yes.

Q. Did you talk with Mr. Coan, the Assistant Prosecutor?

A. I think I asked Mr. Coan—

Q. Well, you talked with him?

A. Yes.

Q. Have you talked with the Attorney General?

A. Yes, sir.

Q. All about this matter?

A. Not all about that matter, no.

Q. You talked with all of them about this matter?

A. Yes, about the case today, yes.

Q. As I understand it, you are the Prosecutor's detective in Union county?

A. I am.

Q. And you knew what was required of an ante-mortem statement when you took this statement, didn't you.

A. Why, yes; I think I did.

Q. You have taken them before?

A. No. That was the first.

Q. But you thought you knew what was required?

A. Yes.

Q. In other words you knew, as you supposed, that a man should be confident, at the time he makes this statement, that he is at the brink of eternity, in the face of death; you knew that, didn't you?

A. Yes.

Q. Now, I am referring to the record yesterday, on page 99, in which you testified as follows:

"Q. What was said to him by anybody before he signed the paper?

"A. Why, he was told he was about to die.

"Q. Who told him that?

"A. I did, and the doctor.

"Q. Anybody else?

"A. The doctor told me that he could not live.

"Q. And you told him?

"A. In Italian.

"Q. And the doctor was there?

"A. The doctor was there; yes, sir.

"Q. Then what did the patient say?

"A. Why, he said, it ain't only the doctor that knows that, or words to that effect, it was not only the doctor that knows that; the exact words I cannot remember, but words to that effect."

A. Yes.

Q. Now, in view of that testimony, and in view of that knowledge of what you say was important for him to have said, I ask you why you did not continue and tell also, when you were asked what he said, what you said today he said?

A. I didn't know that the conversation that I had with him about the orange, or I could help him, or anything like that, had anything to do with the case.

Q. No. But you were asked what did the patient say, and the question stopped there and the room was open for you to tell us all the patient said, and all you said he said was, "It ain't only the Doctor that knows that," or words to that effect?

A. Yes.

Q. Now I want to know, if you now say that he said this other statement that you made, why you did not tell us that yesterday?

A. I didn't know that you wanted me—wanted that said, because that was a conversation him and I were having.

Q. Were you testifying to what they wanted you to say or were you testifying to the truth?

A. I am testifying to the truth, and I tried to answer the question.

Q. You were asked, weren't you, "What did the patient say," and you undertook to answer that question?

A. Well, the patient said—

Q. One moment. You were asked, "What did

the patient say," and you undertook to answer that question, didn't you?

A. Yes.

Q. There was no limit to that, what did the patient say?

A. Yes, to the Doctor. After the Doctor said he is about to die, and I answered the question,—

Q. One moment. The question I am addressing myself to was not to the Doctor. You were asked then, "What did the patient say," and your reply was, "Why, he said, why, it ain't only the Doctor that knows that, or words to that effect?"

A. Yes.

Q. Now I want to know why you did not continue and tell us what you told today that he said?

A. Well, because I thought I was answering the question, and I thought that as all that was needed. I understood the question, what I was asked, what did he say, when I said to him that the Doctor had said that he was about to die. He said only the Doctor knows that, or words to that effect. Either, only the Doctor knows that, or does the Doctor have to tell me that, or words to that effect. The exact words I don't remember.

Q. You then went on to say that he further said this:

> "Q. Did he say himself anything to you on the subject that he was going to die," and your reply was, page 100, "Why, he told me that he felt pains in this stomach"—

A. That was before.

Q. One moment. Don't be so anxious. Yesterday when you were interrogated about this

thing, before you had been talking with all these gentlemen—this is a case of life and death, young man, and I want you to be careful.

A. I appreciate that, Mr. McCarter.

THE COURT: Proceed with the question.

MR. WESCOTT: He does not have to warn him.

Q. Yesterday when you were talking on the stand, you were asked, after you had made this statement, that his reply was, "It ain't only the Doctor that knows that," you were then asked, "Did he say anything else to you on that subject, that he was going to die," and your reply was, "Why, he told me that he felt pains in his stomach, that he felt as though his stomach was full of water"?

A. Yes, sir.

Q. Why didn't you tell us yesterday then, when you were asked the second time, what he said about his going to die, what you have told us today?

A. Why, he didn't tell me he was going to die

Q. What?

A. The words he said, I know I am past this world.

Q. Why didn't you tell us that yesterday?

A. I didn't know that was asked me. If they had asked me to tell all the conversation I had with him, I could tell what I had in reference to the statement.

Q. You say that he suggested that you should write to his father?

A. Yes, sir. Not while we were taking the statement, while I was waiting for Mr. Eaton—

Q. Just answer the question. He suggested you should write to his father?

A. Yes, sir.

Q. Then he revoked that suggestion, didn't he?

A. Afterwards, yes, sir, he did.

Q. Did he tell you what to say to his father?

A. He just said, "Send news to my father," or words to that effect. Just the exact words I can't remember, but I was to send a letter to his father.

Q. And then he told you not to?

A. Then he told me not to.

Q. How long after he told you to write to his father, did he tell you not to write to his father?

A. After this statement had been taken.

Q. Won't you answer the question. How long after he told you to write to his father did he tell you not to write to his father?

A. Well, I can't say whether it is an hour or two hours, after that, because I was in the hospital all afternoon.

Q. Was it as long as two hours?

A. Probably two hours. It might have been only an hour.

Q. So you went back and saw him after the statement was signed?

A. If you will let me explain I will tell you why—

Q. I am not trying to keep you from explaining anything, I am asking you a simple question.

A. I had to go in that room again. We were taking other statements. There was another patient in that room.

Q. Ah, then you took another statement that day?

A. We took several statements.

Q. Several statements?

A. Yes, sir.

Q. After you had finished this statement, and signed it, you went back in the room?

A. Yes, sir, some time after that.

Q. And it was then he told you that he did not want to have his father written to, or not to send the letter to his father?

A. It was then, yes.

Q. And did he give you any reason why he did not want his father written to?

A. He said that the boss would write.

Q. Was the boss there?

A. No, there was no one else there, only another patient that was in the room there. I don't know whether there was one more or two more patients in that room.

Q. Did you hear anything said to him while you were there, on either of those occasions that morning, about having an operation in the afternoon upon him?

A. No, I didn't hear it said to him. I heard the Doctor mention about an operation to be performed on him, but I did not hear it said to him.

Q. Was that during the time the statement was being prepared?

A. No. It was after the statement.

Q. After the statement was prepared?

A. Yes. I heard the Doctors talking about it.

THE COURT: The question was whether you heard him say to the deceased, not what the Doctors said.

A. No, I didn't hear it said to the deceased.

Q. Was that conversation in the room with the deceased or elsewhere?

A. No, sir, it wasn't in the room. It was in the corridor of the hospital.

Q. He spoke to you in Italian, didn't he?

A. He spoke to me in Italian. Mr. McCarter, first can I explain something?

Q. Pardon me; I have not asked you any question. He spoke to you in Italian, didn't he?

A. Yes.

Q. Now, will you kindly state in Italian what it was he said to you when you told us he said "I know I am past this world."

A. State it in Italian?

Q. Yes.

A. In the Italian language?

Q. Yes.

A. (Witness states in Italian language.)

Q. Did he mention his sister to you, or did you mention his sister to him?

A. I mentioned his sister to him.

Q. Who told you about his sister?

A. I don't know whether it was one of the patients in the hospital, or whether I had heard it while we were going down to the hospital, that he had relations. I don't know just where I heard that.

Q. He told you he had no sister, but he had friends in Perth Amboy?

A. He said he had no sister—I am not sure whether he said he had no sister here or—he said he had friends, I think he said Perth Amboy. I am not sure.

MR. McCARTER: All right.

RE-DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Did he say anything about his wife and children?

A. Now, I think he told me that he was a single man. I am not sure about that.

MR. WESCOTT: That is all.

We offer this paper.

THE COURT: Any objection to it?

MR. McCARTER: Well, of course, we still renew our objection, and your Honor will have to pass on it, of course.

THE COURT: I did not hear you, Mr. McCarter.

MR. McCARTER: We renew the objection we made yesterday.

THE COURT: I think that I will admit the statement. It may be received and marked as an exhibit.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

(Statement offered in evidence and marked Exhibit P. 13.)

STEPHEN HEPBEN, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN: (Through Interpreter Stephen F. Somogyi.)

MR. FLORANCE: I desire to read this dying declaration at this time.

THE COURT: I would not bother to read it now. You can read it later.

MR. FLORANCE: It has been offered at this time.

THE COURT: It is offered and received. Do not let us stop to read it. You can read it later on.

Q. Where do you live, Steve?

A. Carteret.

Q. Did you live in Carteret last January?

THE INTERPRETER: I do not understand him.

A. I came to Carteret on the 24th.

Q. Of what month?

INTERPRETER: I do not quite get the month that he used.

Q. Do you know where the Williams & Clark station is in Carteret?

A. It is down below, a small station.

Q. Were you down at that station at eight o'clock on the morning of January 19th?

A. Yes, I was. I was going from work, and the strikers were there, and I was there also.

Q. And where were you?

A. I was there by the shop. There is a small

shop behind Williams & Clark's. I don't know what they call it.

Q. When you say behind Williams & Clark's, do you mean the station of Williams & Clark?

MR. STRICKER: I object.

THE COURT: He has not said the station, Mr. Coan.

Q. Where was this small shop you speak of?

A. On the other side behind the big one of Williams & Clark.

Q. State whether or not it was near the railroad?

A. It is the same as the big one. I was going home from there.

Q. Did you see a train there?

A. Yes.

Q. How far away were you from the train?

A. When they started to beat, maybe I was ten steps away, on this side.

Q. Were you on the side next to the Williams & Clark, or on the other side?

A. The other side.

Q. And how many people were there besides you?

A. I couldn't count them, because when they started to beat, I didn't have a chance. Where could I have counted them?

Q. Who started to beat?

A. The men who came out of the Williams & Clark shop.

Q. How many men came out of the Williams & Clark shop?

A. I can't say. I was afraid to look there. I don't know any.

Q. Did you see them?

A. I saw them when they ran and started to shoot, and I began to run away.

Q. Where were they when they started to shoot?

A. On the other side of the track, right by the track.

Q. And what did they do?

A. They shoot from the thing; I don't know what they call them.

Q. And what did you and the men who were with you do?

MR. STRICKER: I object. I do not understand that this witness has said there was anybody with him at this time.

THE COURT: Do you mean any crowd there?

MR. STRICKER: No. Anybody with him. I understand that he was on the other side of the track. That he was coming from some works, as he puts it, back of the Williams & Clark plant. As I understand his testimony, he was alone.

THE COURT: I do not understand it so. Answer the question.

Q. (Repeated by stenographer)?

A. I have no acquaintances here. I was standing there probably five minutes when the train went.

Q. Well, after the men that came out from the factory started to shoot, what did you do?

A. I ran across the water.

Q. Did anything happen to you?

A. Yes, I am shot.

Q. Well, where?

A. Here, the entire leg up to here (indicating from the foot to the waist on the left leg).

Q. How many shots?
A. 53.
Q. State whether or not they were in the back or the front of the leg?
A. Back of the leg.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Have you any of the shot?
A. I have them in my leg.
Q. 53 of them?
A. Yes.
Q. You never saw them, did you?
A. I can count them now wherever it hurts me.
Q. Have you ever seen any of them?
A. No. I can't say who shot me.
Q. How deep are these shots lodged?
A. They entered here (indicating the outer side of the leg) and they are now coming out here (indicating the inner side).
Q. How many of them came out?
A. There are eight of them which are now under the skin.
Q. Can you see them or feel them?
A. Yes.
Q. Have you made any attempt to have them taken out?
A. I can't take them out, because you have to get one to take them out. You need stuff for it.
Q. Have you been to a doctor for it?

MR. STRICKER: Mr. Interpreter, there is a question, I think, can be answered yes or no.

A. I went to Dr. Reason.
Q. Did he take any of them out for you?
A. No. Took out nothing.
Q. How long have you been in this country?
A. Nine years.
Q. Just show me where you say you were shot? Just stand up, won't you please? Just indicate to me on the leg?

A. Right here (indicating).
Q. You were hit on the side, weren't you?
A. Yes, on the side.
Q. What is the name of the factory that you came from that morning?
A. I can't say, because I didn't work in those shops. I don't know the boss. That shop was only erected for a year or so.
Q. Well, what is the name of the place?
A. The place is the same as Williams & Clark.
Q. How far from Williams & Clark's place is it?
A. It can be about 200 steps.
Q. Were you going to work, or from work that morning?
A. From work.
Q. You had been working all night?
A. No, I didn't work there. I didn't work there.
Q. Did you try to go to work that morning?
A. I was looking for work.
Q. Why did you go to work?
A. Well, when you go to a shop it doesn't happen that you get work right away.
Q. Did you go to this shop and look for work?
A. No, sir; I was going back from the shop.
Q. Well, had you been to the shop then?
A. I was by the office and returned home.
Q. Whose office were you at?
A. By this small factory.
Q. Now, when you started back, where was the train?
A. As I returned, and as I was going home, the train came.
Q. Was the shop from which you were returning north or south of the Williams & Clark plant? You can locate it yourself.

A. Towards Carteret.

Q. How far from that shop were you?

A. About 600 steps towards Carteret.

Q. Well, this shop that you are talking about is on the road to Carteret, isn't it?

A. It is not very far from the track.

Q. Running to Carteret?

A. Well, I don't know where the boundary is, or whether there is one there.

Q. Do you know where Carteret station is?

A. I know the same about Chrome, but the boundary might be under some other company.

Q. I am not asking you about any boundaries. How far is the shop that you are coming from, from Williams & Clark's plant?

A. About 200 steps.

Q. About 600 feet?

A. I don't know how many feet.

Q. When you are looking towards Elizabeth, is the shop that you had been to, to the left or to the right of the Williams & Clark plant?

A. The same as Williams & Clark; the same, on the right.

Q. And about 200 steps from the Williams & Clark office, is it?

A. From the fence.

Q. Which fence?

A. Well, there are fences around. Here is a fence here, and also a fence there.

Q. From which fence is it 200 steps?

A. One from the other, if you would figure it that way.

Q. Well, there are three fences there, are there not?

A. There are no three fences there. I didn't figure that as there is a place in the middle, how far it is from the other.

Q. When you speak of the fence in the middle, do you mean the fence in front of the Williams & Clark plant parallel with the tracks, and running the same as the tracks?

A. I mean the place where there is nothing between the Williams & Clark and that. There is a track to each factory.

Q. Do you understand this plant here, this map?

A. I don't understand the map.

Q. Do you know the fence in front of Williams & Clark?

A. Yes.

Q. Was the shop that you came from to the left of that fence?

A. When you go to Carteret on the left, yes.

Q. You say that shop is 200 steps away from the Williams & Clark fence?

A. Not the one that is on the front.

Q. How far is it from there?

A. Probably over 700 steps.

Q. And how far were you away from the shop that you left when you saw the shooting?

A. I was about 400 steps away from the shop when they began to shoot.

Q. Then you were about 300 steps away from the Williams & Clark fence, is that right?

A. May be they were. I was further away because I was running up towards Carteret.

Q. I didn't ask you anything about that. If the shop from which you came was 700 steps away, and you first saw the shooting from three or four hundred feet from that shop, then you are 300 feet from the Williams & Clark fence, isn't that correct?

A. I was running on the other side, on the side entirely.

Q. Will you kindly answer my question?

A. I can't figure it very well.

Q. How long a step did you take?

A. Whatever I could make, either large or small.

Q. When you speak of a step in estimating the distance—when you speak of steps in estimating the distance, how big a space did you contemplate for each step?

A. That can be four feet if it is a big man.

Q. And when you speak of four feet, is that the kind of step you have in mind when giving us the distances between the Williams & Clark fence and the shop from which you came?

A. I can't figure that out, I would have to measure it.

Q. When you speak of a step, you have in mind four feet, haven't you?

A. Well, when a man runs and he is afraid, he makes a big step.

Q. Yes, but in estimating the distances as you have here today, when you speak of a step you have in mind a distance of four feet?

A. I figure a foot as a foot (indicating his own foot).

MR. STRICKER: I know, that is seven or eight inches, but what do you figure a step.

A. May be three feet.

Q. Why did you say four feet before?

A. That is when you run in a hurry.

Q. When you run you take four feet?

A. Well, when you run, you must necessarily take a bigger step.

Q. And when you are giving us the distance between the Williams & Clark fence and the shop from which you came, and you spoke of steps, what do you have in mind, a man walking or run-

ning?

A. As you are accustomed to walk.

Q. When you first saw the men coming out of the Williams & Clark office, the train was then in the station, was it not?

A. Yes.

Q. And the train was between you and the office, was it not?

A. Yes, I was on this side of the train here, on the left side.

Q. And you were on the track that led to the place you speak of?

A. No, I was straight towards Williams & Clark.

Q. What side of the track were you on?

A. On the right going to Carteret. The left is Williams & Clark.

Q. And you were on the right side?

A. Yes.

Q. And the train was between you and Williams & Clark plant, wasn't it?

A. Yes.

Q. Now, wasn't it at that time that you saw some men coming out of the office?

A. Sure, then.

Q. How many?

A. Well, could I figure it when they started to fight? I began to run.

Q. Well, now; who started to fight?

A. Those men began to fight first.

Q. Well, who were they fighting with?

A. The strikers, whatever they are.

Q. Just step down here a moment, won't you please?

THE COURT: He has testified he don't understand this.

(The witness descends to map).

THE COURT: He has testified he don't understand this map.

MR. STRICKER: I may show him one point on this and we may try.

Q. Would you have any difficulty in getting into your mind that this is a railroad track?

A. Yes.

Q. Do you understand that? And that is the little station?

A. (In English.) Yes.

Q. The Williams & Clark, and here is the Williams & Clark office?

A. (In English.) Yes.

Q. Now where were the men fighting, can you show us on this plan?

A. The men were fighting from this side (indicating the Williams & Clark side, and we were running in this direction (indicating a westerly direction).

Q. Where on this plan was it that the fighting took place?

A. I can't show you because I can't understand this. I am not learned.

MR. STRICKER: All right, sir.

Q. How many men came from that office?

A. I figure they were around about 18.

Q. Did you count them?

A. I did, but I figure that there was quite a bunch.

Q. Did those men have clubs?

A. I didn't see any clubs.

Q. Did you see them have anything else in their hands?

A. I saw them when they were taking out these firearms and started to fight.

Q. What kind of firearms did they take out?

A. I didn't see very well, but they were long ones.

Q. Were they white or black?

A. It was a yellow color.

Q. How many of these 18 men that you saw had arms?

A. I can't say very well.

Q. Did you see any of them with revolvers, small pocket firearms?

A. No, I didn't.

Q. How many shots did you hear fired?

A. Well, how could I figure when I got mine in my leg, fell over and then I ran.

Q. You don't know who fired the first shot, do you?

A. No, sir.

Q. Or where the first shot was fired from, do you?

A. From the Williams & Clark side of the track.

Q. Was it one shot or many shots?

A. One shot after another. There was many.

Q. How many?

A. Well, could I count them?

Q. Were there a thousand shots?

A. I won't say.

Q. Or was there fifteen?

A. I won't say, because I didn't count them. I will tell you what I know and nothing more.

MR. STRICKER: That will be all.

JOHN SOBIESKY, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through the Official Interpreter.)

Q. John, where do you live?

A. At Chrome.

Q. Where did you live last January?

A. At Chrome.

Q. Do you know where the Williams & Clark railroad station is?

A. Yes.

Q. Were you down there on the morning of January 19th last?

A. I was.

Q. Who were with you?

A. There were many.

Q. And where were you down there?

A. Standing by the station.

Q. Tell us what took place?

A. We were all standing there in a bunch. They came out of the office and started to shoot us.

Q. Who came out of the office?

A. The deputies.

Q. What office did they come from?

A. They came from the gate.

Q. What gate?

A. Williams & Clark's office.

Q. How many of them?

A. May be 25 or 30.

Q. And what did they shoot with?

A. Revolvers and guns.

Q. Where were they when you first saw them?

A. We were standing by the station and they came out of the office.

Q. Did you see them come out of the office?

A. Yes, like soldiers.

Q. How did they come, which direction did they come?

A. They came to us.

Q. And where were they when they began to shoot?

A. When they came to us they began to shoot.

Q. How far were they from you when they began to shoot?

A. May be 25 or 30 steps, I don't know.

Q. How many times did they shoot?

A. I cannot say how many times.

Q. Did anything happen to you?

A. I am shot.

Q. Where?

A. (Witness indicates over the heart). Here I have a bullet which it came out the other side. (Indicating right side.)

Q. Did you see who shot you?

A. I don't know who did, they were all shooting.

Q. Did you recognize any of the men who shot?

A. I don't know.

Q. Well, look around through this court room and see if you see anybody who shot?

A. Do I know? I wouldn't recognize them.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Were you a striker?

A. I was.

Q. And you were there with about five or six hundred men that morning?

A. Yes, we were altogether.

Q. For the purpose of preventing by force, if necessary, anybody from getting off the eight o'clock train and going to work?

A. We went there to look and see whether anybody was there; there was no one there.

Q. Whether anybody was coming there off that train to take the places in the factory?

A. Yes.

Q. And you and your five or six hundred colleagues were there to stop them?

A. No. Why, just to look if they came.

Q. What would you have done if a number of men got off that train to go to work and take your places in Williams & Clark plant?

A. Would have told them not to go to our work.

Q. And suppose they went to work after you told them not to, what then?

A. Wouldn't do anything, would go home.

Q. Everything was nice and quiet there that morning, wasn't it?

A. We were quiet.

Q. And when the train came in you were quiet?

A. We were quiet.

Q. Nobody shouted out?

A. No.

Q. There were none of the strikers had sticks or clubs?

A. (In English.) I didn't see them, I don't know.

Q. None of the strikers had stones, had they?

A. (In English.) No.

Q. Or pieces of iron?

A. (In English.) I didn't see any.

Q. Or pieces of slag? Pieces of slag or cinders?

A. (In Eiglish.) I didn't see.

Q. Did you see any ties on the railroad track that morning?

A. (In English.) No, I didn't see nothing.

Q. Did you see a pole stuck in the track with a red sweater or piece of red cloth?

A. (In English.) No, sir.

Q. Didn't see that?

A. (In English.) I didn't see nothing.

Q. Do you know Julius Yaeger?

A. (Through Interpreter.) Yaeger?

Q. Yes?

A. Yes.

Q. Do you know him?

A. Yaeger? Yes.

Q. Was he there that morning?

A. Yes.

Q. Did you see him go up to the train and stop it?

A. No, I did not.

Q. Did you see any of the strikers jump on the train to see if there were any scabs on it?

A. I didn't see.

Q. What time did you get up on the morning of the 19th?

A. I got up at seven.

Q. Did you go down to Liebig?

A. No, to Williams & Clark.

Q. Where were you when this shooting took place?

A. I was by the station.

Q. Which side of the station?

A. I was on the right side of the station.

Q. Who were you talking to at that time?

A. Oh, we were all there standing all together.

Q. Give me the names of five men you were talking to that morning.

A. I don't recognize them, I can't say.

Q. Then of these five or six hundred men, with the exception of Yaeger, all were strangers to you?

A. All of us who work together.

Q. But you were not acquainted with those men, were you?

A. No, I would recognize them because they worked in Liebig's.

Q. Do you know any of the five or six hundred men over at that station that morning?

A. No, I don't.

Q. All right. Did the train come right into the station? The eight o'clock train?

A. No.

Q. Why didn't it?

A. It stopped there because there were many people there.

Q. Then the train did stop. You did see the train stop before it got in the station?

A. When I came there the train was stopped there.

Q. And there was something on the railroad track, wasn't there?

A. I didn't see anything.

Q. And you didn't see anybody jump on or off?

A. I didn't, I can't say anything about it.

Q. And the train came into the station, didn't it?

A. Later on it started and went to Chrome.

Q. No, it first stopped some distance away from the station, as you say; of course there were many people on the track—is that correct?

A. Yes, of course there were many people on the track, that is why it stopped.

Q. And they were on both sides of the track, weren't they?

A. I can't say anything about that because I was in the middle.

Q. Well, if you were in the middle, weren't you in a very good position to see whether or not they were on both sides of the track?

A. I can't of course; there were some of them higher up and some lower down.

Q. You mean to say you were so surrounded by a crowd of people that you couldn't see what was going on at the track, is that right?

A. Well, I could not, because I am a small man.

Q. I see. And the shooting began after the train got into the station. Isn't that correct?

A. Who began to shoot?

Q. Anybody?

A. Well, they came out from the office.

Q. I know that; that was at the time the train got into the station?

A. Yes.

Q. And when the train got into the station you were still surrounded by the people?

A. I was in the same place.

Q. And you didn't grow any. You are just as small now as you were then?

A. Well, I won't grow any taller.

Q. What were these men shooting with you say came from the office?

A. Well, of course with revolvers.

Q. Why do you say, "Of course?"

A. Well, they came to us and started to shoot.

Q. How near did any one man get to you that shot?

A. Do I know? I can't say.

Q. Did all of these men have revolvers?

A. No they had long ones also.

Q. How many long ones and how many short ones?

A. I don't know. I don't know. I can't say.

Q. Well, when you say you saw them coming out of the office, do you mean you saw them coming out of the door of the office?

A. They came through the gate, the gate office.

Q. You didn't see them come out of the door of the office?

A. They went out through the gate.

Q. I am asking you whether you saw them come out of the door of the office, and you can answer that yes or no?

A. Yes, they came out through the office, through the door.

Q. And when they started coming out through the door of the office, the train was then in the station? That is right, isn't it?

A. The train was standing.

MR. STRICKER: That is all.

FRANK KOCSIS, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through Interpreter Stephen F. Somogyi.)

Q. Where did you live last January?
A. At Chrome.
Q. Do you know where the Williams & Clark station is there?
A. I do.
Q. Were you down to Williams & Clark station on the morning of the 19th of January last?
A. I am not positive whether or not I was there. I don't know.
Q. Did anything happen to you down at the Williams & Clark station?
A. Yes, it did.
Q. What was it?
A. I was shot in the leg.
Q. And where were you when you were shot?
A. By a shanty depot.
Q. Who else were there?
A. There were many there.
Q. Well, where were those many that you speak of?
A. They were standing by the shanty, by the track.
Q. Who shot you?
A. The others who were in the factory.
Q. How many of them were there?
A. I am not positive, but about 25 or 30.
Q. Where did you first see them?
A. They came down from the factory.

Q. Well, where were they when you saw them first?

A. They were stopping by the track.

Q. Did you see anything in their hands?

A. Yes, guns.

Q. How many guns?

A. I can't say positively how many. Didn't have time to look

Q. Was there much shooting, or little?

A. Much.

Q. And when the shooting began, where were you?

A. I was by the track, on the east side.

Q. Was there a train there?

A. Yes, there was.

Q. And where was the train?

A. Standing by the shanty.

Q What did you do after the shooting began?

A. I ran.

Q. Where did you say you were shot?

A. In my leg.

Q. Back or front?

A. Back.

Q. How many shots?

A. 13 places.

Q. Do you know who shot you?

A. I don't know. I don't know him.

Q. Did you see the person who shot you?

A. I did not. They all shot.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. How many men were there?

A. There were many of us. I can't say now just exactly how many.

Q. On both sides of the track?

A. We were all standing on the easterly side of the track.

Q. Easterly side of the track?

THE INTERPRETER: This is my mistake. This time and also the last time I interpreted the east and it should have been the west.

Q. Did you mean to say you saw no men on the factory side of the track?

A. No, I did not see anyone on the factory side.

Q. Had the train reached the station?

A. It was standing there when they came out.

Q. Standing at the station when the men came out?

A. Yes.

Q. The train was between you and the factory?

A. Yes.

Q. Is that your signature (handing paper to witness)?

A. Yes.

Q. Do you remember having a talk with Squire Sedan?

A. I remember speaking with someone, but I don't know who he was.

Q. And you told him how it occurred?

A. Yes.

Q. What you told him was correct?

A. Yes.

Q. He spoke to you in this language, whatever it is?

A. Yes, there was a man who spoke Hungarian.

Q. Didn't you tell him as follows: "When I heard the shooting I turned around to go home, when I got the first shot, and just as I made a step I got the second shot?"

A. Yes, I did.

Q. That was right?

A. Yes.

Q. "I did not have any sticks or clubs, and I do not know whether the rest had or not. They might have had some?"

A. Yes. I did not see any.

Q. "There was a bunch around, and a good many shots at the same time?"

A. Yes.

Q. "I do not know who shot first, or who hit me."

A. I do not.

Q. That is right, that is what you told this man?

A. Yes.

Q. "I cannot identify the person who shot me, or any other person, because I do not know them?"

A. Yes. I couldn't point him out.

Q. As soon as you heard the first shot you turned to run, didn't you?

A. Yes.

Q. And the train was between you and the deputies?

A. Yes.

Q. And the train was in the station before the deputies left the office gate?

A. I am not positive about that. I didn't pay attention to it.

MR. McCARTER: I think that is all.

JOHN MUZIKA, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

(Through Interpreter Stephen F. Somogyi.)

DIRECT EXAMINATION:

By MR. STRYKER:

Q. Where did you live last January?

A. At Carteret.

Q. Do you know where the Williams & Clark station is at Carteret?

A. Yes.

Q. Were you there on the 19th of January in the morning?

A. Yes.

Q. Who else was there?

A. There were many men there.

Q. Whereabouts were they?

A. Standing by the station.

Q. Did you see the train come in?

A. Yes, I saw the train coming.

Q. What happened when the train came in?

A. It happened this way: The train came there, and when the train started to go to Carteret they began to shoot.

Q. Who began to shoot?

A. Them bums out of the office, the bums of Williams & Clark.

Q. Where were they when you first saw them?

A. Standing by the station, and they came out of Williams & Clark's.

Q. Did you see them come out of Williams & Clark?

A. I did.

Q. How many of them were there?

A. I cannot say how many there were, because I did not count them.

Q. Can you say about how many?

A. Maybe twenty or more. I don't know.

Q. Were they armed?

A. Sure they were.

Q. What arms did they have?

A. They had short revolvers, and long guns.

Q. Where was the train when they started to shoot?

A. It was going to Carteret, coming by the station.

Q. On which side of the track were you, the station side of the track, or the Williams & Clark side?

A. On the station.

Q. What did you do when they started to shoot?

A. I started to run, and I ran back of the station, back of the wall.

Q. Did anything happen to you?

A. When they began to shoot I ran back of the station, and when I was back of the station they shot me in the leg.

MR. McCARTER: One moment. If he is behind the station how does he know?

THE COURT: What do you say? Is there an objection?

MR. McCARTER: I say the witness says he was behind the station. How could he tell, therefore, who shot him? Very easy to get these men to surmise.

THE COURT: Ask him the question.

MR. STRYKER: I will change the form of the question.

Q. Did you know who shot you?
A. No.
Q. Did you see the men who shot you?

MR. STRICKER: We object.

THE COURT: I will allow the question. Answer the question whether he could see him or not.

A. No, I did not; because I was running.
Q. What part of the leg were you shot?
A. Here in the leg (indicating the right leg under the knee).

Forty-three buckshot.

MR. STRYKER: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Were you a striker?

A. Yes.

Q. Were you at Liebig's that morning?

A. No.

Q. And you came down to that station that morning to see whether there were any scabs on that eight o'clock train, didn't you?

A. Yes.

Q. And you were there with five or six hundred other men?

A. No, there was a whole bunch there, probably two or three hundred men.

Q. Of strikers?

A. Yes.

Q. And they came down there to prevent these scabs from going to work?

A. Yes.

Q. Did any of the strikers have sticks or clubs?

A. No. They had nothing.

Q. Stones?

A. No.

Q. Pieces of slag or cinders?

A. No, nothing.

Q. Or pieces of iron?

A. No.

Q. Do you know a man by the name of Yeager, Julius Yeager?

A. No.

Q. There were no ties on the railroad track?

A. They were talking about having placed them, but I didn't see what time.

Q. Well, you saw no ties on the track, did you?

A. No, because when I came there the ties had

been taken off. I did not see who took them off.

Q. Did you see a pole with a red sweater, or a cloth?

A. When I was going from Carteret I saw something red there, but I did not know whether it was a sweater or something else.

Q. Well, it was right on the track?

A. Yes.

Q. Did the eight o'clock train come right into the station, or did it stop before it got there?

A. No. It stopped by the factory, and from the other factory it went on slowly.

Q. And came right into the Williams & Clark station?

A. Yes, and stopped at the station.

Q. And the locomotive got beyond the station, didn't it?

A. Yes.

Q. And the first car got by the station?

A. I think the second car past it.

Q. The train was between you and the Williams & Clark office, wasn't it?

A. Yes.

Q. And what you saw at the Williams & Clark station was by looking under the train and between the cars?

A. When the bums were standing there with the guns.

Q. By what you saw was by means of looking under the train, or between the cars?

A. No, I did not see anything that way. There were many men there. I did not see.

Q. There was a lot of men stood right around you, didn't they?

A. Yes, many.

Q. And then right alongside of the crowd was the train?

A. Yes.

Q. And the shooting that you heard happened after the train pulled in the station?

A. When the train started they started to shoot.

Q. That is, when the train started out of the Williams & Clark station?

A. Yes.

Q. And there were five cars on that train?

A. I did not count them. I don't know.

Q. And after the train pulled out of the station it was then that you saw these bums shooting, that is correct, isn't it?

A. They began to shoot immediately when the train started to go.

Q. Well, that is when you heard the shooting?

A. They started to shoot and I ran behind the station.

Q. Could you see through the station then?

A. No. I ran behind there, and I did not see anything after that.

Q. Now the truth is that you only heard shooting, but saw none?

A. Yes.

MR. STRICKER: That is all.

C. POTH, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRYKER:

(Through Interpreter Stephen F. Somogyi.)

Q. Where did you live last January?
A. At Carteret.
Q. Do you know where the Williams & Clark railway station is in Carteret?
A. Yes.
Q. Were you there on the morning of January 19th about eight o'clock?
A. Yes.
Q. About how many other people were there?
A. I can't say.
Q. Did you see the eight o'clock train come into the station?
A. I was there when the train came in there.
Q. What happened, if anything, when the train came in?
A. The shooting took place when the train stopped.
Q. Who did the shooting?
A. Whoever came out of the factory.
Q. Did you see anyone come out of the factory?
A. The whole bunch.
Q. What factory?
A. The old factory, which is in the centre, right by the small office.
Q. What part of the factory did they come out of?
A. By the office.

Q. Where did they come when they came out of the office?

A. By the depot, where the train stopped.

Q. Where were they when the shooting was first shot, when you first saw or heard the shooting?

A. In front of the depot. We were on one side of the track and they were on the other.

Q. On which side of the track were the men who came from the factory?

A. On the other side.

Q. Well, is that the same side that the factory is on?

A. Yes. The opposite side of the depot.

Q. Where was the train when the first shooting was done?

A. It had just started. It was a little back of the station.

Q. Where was the train when the men came out of the office of the factory?

A. When the train arrived there the men were there.

Q. Where was the train when he saw the men come out of the factory office?

A. I did not see the train then, because we were many of us there.

Q. Where were you when the shooting commenced, how close to the station?

A. About the centre. About the distance from me to the centre window. There are two shanties there. One is a depot and the other is the work car shanty, and I was about between the two of them.

Q. What did you do when the shooting commenced?

A. Nothing.

Q. Did you see whether the men who came

from the factory had firearms, and if so, what kind?

MR. STRICKER: I object to that question on the ground it is leading. This witness ought to be able to tell us, without any suggestion, whether they had anything, or what it was they had.

THE COURT: I will allow the question.

A. Revolvers and long guns.

Q. Were you shot?

A. I was. Both legs, from the knee down.

Q. Have the bullets or shot been removed from your legs?

MR. STRICKER: I object to that question. I think he ought to show what he was shot with first.

THE COURT: I suppose you might ask him what was the character of his wounds?

MR. STRYKER: I will withdraw that question and re-frame it.

Q. How were you shot—what was the character of your wounds?

MR. McCARTER: I object to it as immaterial. We are not trying his civil suit against the company. What possible difference can it make.

THE COURT: I do not think it makes a particle of difference, and I think a great deal of these witnesses cross examination has been entirely immaterial. It does not help us in the trial of this case. I suppose the only thing the State wants to show is where this man was hit. We are not trying the question whether he was shot justifiably or not.

MR. STRYKER: Does the Court overrule, or allow the question?

THE COURT: I overrule the question.

Q. What part of your body were you shot?

MR. STRICKER: He answered that, from his knee down.

MR. STRYKER: I know, but he did not say whether it was the front or back of his leg.

THE COURT: Yes. He testified that he was shot from the knee down. I judge from that a number of shots. I don't know.

MR. STRYKER: I will re-frame the question.

Q. Were you shot in the front or back of your legs?

A. I was shot in the back.

Q. What happened after you were shot, if anything?

A. I wanted to go, but I couldn't. I was lying there, shot down, after the train started to go.

Q. Did anything happen then?

A. No. Nothing happened except after the train went away they threw everybody into the water.

Q. Who threw everybody into the water?

MR. McCARTER: I object as immaterial.

MR. STRICKER: We object to this line of inquiry, what happened after the train left, and who was thrown into the water, and by whom.

THE COURT: He has answered that, and he has testified that he was thrown into the water. I think I will allow that question. You may have an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. STRICKER: We take an exception.

Q. (Question repeated by stenographer.)

A. Those that ran out of the factory, and who did the shooting. When I was thrown in the water I had this side of me up (indicating left side), and with this hand (indicating right hand) I was lying in the water.

Q. What happened then?

MR. McCARTER: I object, if your Honor please; these questions must be framed to prejudice these defendants, what happened to this man, whether he was thrown in the water head first or feet first, or another man, how does this affect the question whether these men are guilty of the murder of these men that are dead.

THE COURT: If they did, I think it would be very strong coroborrative evidence, if they actually did it.

MR. McCARTER: I can't see how it would, whether they shot the decedent, or whether they threw this man in the water.

THE COURT: I will allow that, and you may take an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. The tallest one of the ones who did the shooting, then said to the others to pick me up and to carry me away.

Q. To what others?

A. To the shooters who were under him, the ones who had revolvers. I told him I had my both

legs shot and I couldn't walk, and he told them to pick me out of the water.

Q. Who was told to pick you out of the water?

MR. McCARTER: Objected to as immaterial.

Q. (Repeated by the stenographer.)

THE COURT: Find out if he knows who; ask him if he knows who it was.

Q. Do you know who was told to pick you out of the water?

A. I couldn't say positively as to who it was, because I was frightened.

CROSS EXAMINATION:

By MR. STRICKER:

Q. You were a striker, weren't you?

A. Yes.

Q. You were there on the morning of January 19th, with seven or eight hundred other men?

A. I was. After I had breakfast I went there and I had breakfast when the train come.

Q. I don't care anything about your breakfast. I want to know if you were not there with seven or eight hundred other men?

A. Yes, I was.

Q. You were there for the purpose of preventing the so-called scabs from getting into the Williams & Clark plant, and taking the places of the strikers?

A. I didn't go for the purpose of stopping.

Q. Well, was there anybody there to your knowledge with that purpose, that you know of?

A. I don't know anything.

Q. What did you go down there for?

A. Well, everybody went there and I went there too.

Q. What did you go there for?

A. They said they were bringing workers. To see whether—that they were bringing workmen on the train and that day the workmen should see that we strikers were there.

Q. And to stop the workmen from going into the works?

A. I don't know.

Q. You won't say yes or no to that, will you?

A. I went over there the same way I am now.

Q. When you got there everything was nice and quiet?

A. Very quiet. There was nothing happened until the shooting.

Q. And none of the strikers had sticks or clubs?

A. No, I didn't see any.

Q. None of them had stones?

A. No.

Q. None had pieces of cinders or slag?

A. No, I didn't see any.

Q. And you didn't see the train obstructed with ties or a log?

A. I was on the other side, and I didn't see what was over there.

Q. And you didn't see any pole stuck in the track with a red sweater or red cloth on it?

A. The sweater was there.

Q. You don't know what that was put there for, do you?

A. I don't know.

Q. You don't know that a red flag will stop a train in this country, do you?

A. Sure, that is what you stop it with, you can take your handkerchief and stop it.

Q. Didn't you know that that train was going to stop with that red flag stuck in the track?

A. What do I know? It could have gone even with that.

Q. Answer my question. Don't you know that that stick was placed in the track with the red sweater on it by your associate, and with your knowledge that it was intended to stop that train?

A. I didn't know anything about that. I was never in anything like this.

Q. Well, how long were you on a strike?

A. Nineteen days.

Q. And you knew the night before that the men were to gather at that place on the morning

of the 19th for the purpose of stopping this train, didn't you?

MR. COAN: I object; that question has been ruled out several times.

THE COURT: I think I will allow that.

A. There was nothing said about this.

Q. I didn't ask you if there was anything said; you knew the night before that that train was to be stopped, and any scabs or strikebreakers prevented by force, if necessary from entering that plant on the arrival of that train?

A. I knew nothing about that.

Q. How did you know there were workmen coming on that train?

A. Everybody who went over there was speaking about it.

Q. When did they start to speak about it—that morning?

A. That morning, yes.

Q. How far do you live from the station? From Williams & Clark?

A. Further than from here to the corner.

Q. Can you see—the corner over here?

A. There where the horse is passing now, over there (indicating).

Q. That is about 500 feet?

A. About 800 feet.

Q. About 800 feet in which direction? East, west, north or south?

A. To the east.

Q. What street do you live on?

A. Charles street.

Q. Charles street?

A. John street.

Q. Has it a number?

A. No.

Q. Do you know any of the men you were talking to there at that station that morning?

A. Why wouldn't I know them? Those who worked there.

Q. Do you know any by name that were on that station that morning? Yes or no?

A. My boarding boss was there.

Q. Was Julius Yaeger there?

A. I didn't see him.

Q. Do you know him?

A. Yes.

Q. You didn't see him get up on the train and stop it?

A. I didn't see him.

Q. And you didn't see any of the strikers jump on the train, did you?

A. No, because I was lying on the ground.

Q. And you didn't see anybody jump on the steps of the locomotive, did you, of the strikers?

A. I didn't because I was lying down.

Q. And you didn't see the conductor of the train, did you, step down off the front? Yes or no?

A. No.

Q. And you didn't see the engineer come down off his locomotive, did you?

A. No.

Q. And you didn't see the train stop—speaking of the eight o'clock train—about 200 feet north of the station, did you?

A. That is towards Elizabeth?

Q. Yes, towards Elizabeth?

A. Just by the depot.

Q. Answer my question, please?

A. No.

Q. And the train didn't stop until it came into the station?

A. It didn't, it came directly.

Q. And when it stopped, the locomotive went by the station, so that the first or second car stopped in front of it, that is in front of the station?

A. Well, it stopped at the office, at the depot, where you had to get on, a little ways away from it.

Q. The locomotive got by the station, didn't it?

A. No.

Q. Well, did it stop on the other side of the station?

A. It stopped just exactly as it would ordinarily stop for passengers to alight.

Q. Did the locomotive run by that station or not?

A. No.

Q. Well, did it stop at the place where the passengers usually alight, did you say?

A. Well, I never got on at that depot.

Q. Where did the train stop that morning of the 19th?

A. Stopped right by the depot a little away from it.

Q. Which way, towards Elizabeth or towards Chrome?

A. Towards Elizabeth.

Q. How far from the station did it stop?

A. Two or three steps.

Q. Two or three steps; is there a platform there?

A. Switches are there.

Q. Just step down here a minute, will you please?

A. (Witness descends to the map.)

MR. STRICKER: (To the Interpreter.) Just kindly tell the gentleman that this is the Williams & Clark office, and the depot is right here (indicating) and the railroad station is right here. Now the eight o'clock train came from this direction. Now here is that train. When the locomotive came down the track, show us where it stopped here at this station.

A. Here at the switch, just where the switch is. It had to turn there.

Q. The train had to turn at the switch?

A. No.

THE COURT: I don't think you gain anything by showing an ignorant man a map. He don't understand it. It takes a pretty intelligent man to understand a map, and we are losing a great deal of time.

MR. STRICKER: There is very little on this map and I thought he would understand it.

Q. Now then, regardless of where the train stopped the fact is that the shooting took place after the train got in the station; isn't that so?

A. Right after the train came in, not before.

Q. All right. You were on the other side of the train, weren't you?

A. No, on this side. They were on the other side.

Q. I see. Were you on the Williams & Clark side?

A. No, by the depot.

Q. You were on the depot side so that this train was between you and the office?

A. Yes. I was on this side where the depot is.

Q. Exactly. And the train was in front of you?

A. No, it was towards Elizabeth.

Q. How far was it from you?

A. Seventeen or eighteen steps or twenty.

THE COURT: Yes, he has told us that three times; you have gone over this case over and over again just wasting time, proving by this witness things that he said; if you think you gain anything by it, proceed. He has told us before he was fifteen or seventeen feet in front of that train. He has told us that twice.

MR. STRICKER: If your Honor please, the last statement as I recall it, was that the train stopped three feet from that station.

THE COURT: He said it was fifteen or sixteen feet away from that station when it stopped and when he was shot. Now he says it was seventeen.

MR. STRICKER: Yes, when he was shot, if your Honor please.

THE COURT: That is what he is talking about.

MR. STRICKER: No, that isn't what I am talking about. I am talking about the first shot he heard fired.

THE COURT: Proceed, Mr. Stricker.

Q. Where did the deputies come from—the bums as you call them?

A. From the office.

Q. About how many of them?

A. 25 or 30.

Q. All have revolvers?

A. I think they had even two apiece.

Q. You think some of these deputies had two revolvers?

A. It is possible.

Q. Now how many of these men did you see with two revolvers?

A. I didn't see any; I simply thought so as though some had them on their shoulder and they simply shot.

Q. And they shot while they had them on their shoulder?

A. They took them down when they came there, when the train started.

Q. Now, how many men had guns or rifles?

A. They all might have had them.

Q. I didn't ask you what they might have had; I am asking you to tell us positively how many of those men had guns or rifles?

A. All of them that came out. We didn't have any.

Q. How many had rifles and how many had revolvers?

A. I don't know positively.

Q. And all you have been testifying to here this afternoon is what you think? Is that correct?

A. Yes.

Q. Now the first shot that you saw fired was up into the air, wasn't it?

A. Yes. The only one was in the air. The others all at the men.

Q. And when you heard a shot, this first shot fired into the air, you ran, didn't you?

A. Yes.

Q. You ran away, didn't you?

A. I went away from there, but I fell.

Q. After the first shot was fired into the air you ran away?

A. Yes, that is all.

JOHN GAL, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through the official Interpreter.)

Q. Where do you live, Mr. Gal?
A. Carteret.
Q. Did you live there last January?
A. Yes.
Q. Do you know where the Williams & Clark station is?
A. Yes.
Q. Were you down on that station on the morning of January 19th, last?
A. Yes.
Q. Where were you?
A. By the station?
Q. Who was with you?
A. Kalman Batyi. There were many of us there.
Q. Where is Kalman Batyi now?
A. He died.
Q. Which side of the station were you on?
A. In front of the shanty.
Q. Was there a train there?
A. Yes.
Q. And as that train came in what took place?
A. When it came in the train stopped.
Q. Yes, go on.
A. About 50 steps away from the station.
Q. What happened when the train stopped?
A. After the train started the men came out of Williams & Clark, a bunch about 20 yards away from us, and one among them shot into the air,

and after he shot he told all of the others to shoot. At the time that all of them shot the first time, the train had come right in front of us.

Q. What part of the factory did those men come out of?

A. From the office.

Q. And after they came from the office, where did they go?

A. They came to us who were in the front of the shanty.

Q. And where were they when this man fired into the air?

A. About twenty steps away from us on the other side of the track.

Q. And what happened after he fired in the air?

A. The others all shot at us.

Q. What happened then, what did you do?

A. I wanted to run away with the others.

Q. Well, did you run away?

A. I jumped on the train.

Q. How far did you go on the train?

A. 150 yards.

Q. Did you see anybody shot?

A. I saw Steve Poth fall.

Q. Where?

A. On the East Rahway side of the track.

Q. What happened then?

MR. McCARTER: We object again to re-trying of the Steve Poth case. He is asked now what happened to Steve Poth after he was shot on the other side of the track. Nothing to do with this case.

THE COURT: How is that competent?

MR. COAN: I have asked what happened after Steve Poth was shot. That is the question.

THE COURT: Is it competent?

MR. COAN: I think so. It is all a part of one transaction.

THE COURT: Well, what is it you want to prove?

MR. COAN: Simply prove the general occurrences of those defendants there at that time, their actions, right at the time of the shooting.

THE COURT: Well, if you want to open the door, proceed. I will allow the question. I have tried to keep this case within a very narrow compass. I cannot see, as Mr. McCarter says, what difference it makes if somebody else was shot. The simple question before this jury is whether these men came out of that factory and did shoot this man to death, and whether they were justified in doing it. That is all there is about it. It is within a very narrow compass. Proceed.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Were you a striker?

A. I was.

Q. Did you expect some scabs to arrive on this eight o'clock train?

A. Kalman Batyi told me on the road that strikebreakers are coming, that we should go on and look.

Q. Who told you that?

A. Kalman Batyi.

Q. When did he tell you that?

A. About ten minutes to eight in the morning.

Q. Where?

A. On the road.

Q. Who were with you after Batyi told you that?

A. We two of us met.

Q. And was there a big crowd down there when you got there?

A. There were a few hundred there.

Q. Any of them had sticks in their hands?

A. I didn't see anyone have anything.

Q. Didn't see any clubs, any stones?

A. I did not see any.

Q. See anybody get on the engine?

A. I did not.

Q. See anybody jump on the platform of the car?

A. I did not see anybody.

Q. Did you see a red flag?

A. I did not.

Q. Did you see the train stop up before there a few hundred feet?

A. I saw the train stop, but I did not see them

stop the train, because I was standing in the midst of the people.

Q. People all around you?

A. They stood all around me.

Q. Both sides of the track?

A. Only in front of the shanty. The shanty was full. About seventy of us were in there.

Q. In the shanty?

A. In, and in front of the shanty.

Q. Where was the train when the men left the Williams & Clark factory, in the station?

A. They were not in the station.

Q. Where was it?

A. When they came out of the Williams & Clark factory, the train had started to proceed from where it stopped before reaching the station.

Q. Did the train reach the station before you heard any shots?

A. No. There were tracks crossing each other over there, and it had not reached that crossing.

Q. You saw some man shoot up in the air?

A. Yes, sir; I did.

Q. What did he shoot, a gun or a pistol?

A. With a revolver.

Q. In the meantime the train had gotten in front of you, hadn't it?

A. Yes.

Q. And between you and the man who shot?

A. Yes.

Q. As soon as you heard this shooting on the other side of the train, you jumped on the platform of the train?

A. Well, they were shooting, and in the meantime the train came up to where we were, and they were shooting off at the time when I was jumping on the train.

Q. Did you run from the shanty to the train?

A. I did, with the train, and I grabbed hold of it and jumped on.

Q. On the last car?

A. On the second from the rear.

MR. McCARTER: That is all.

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JACOB LEVINSON, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. You are a grocer in Carteret, Mr. Levinson?
A. Yes, sir.
Q. How long have you lived there?
A. Eleven years.
Q. On the 19th of January last, about eight o'clock in the morning, where were you?
A. I was standing about 400 feet from Williams & Clark's gate.
Q. Do you know where the Williams & Clark station is?
A. Yes, sir.
Q. When the 8:06 train pulled in there did you observe anything?
A. Yes, sir.
Q. What was it?
A. The train stopped.
Q. Where did it stop?
A. It stopped about thirty feet from the station.
Q. And after that what happened?
A. There was a crowd of strikers collected around.
Q. Yes. And what then.
A. Then I seen men rushing out from the Williams & Clark gate and started to shoot in the crowd.
Q. How many men?
A. I should judge about fifteen.
Q. Where were they when you saw them first?
A. They were within the gate.

Q. And where did they go from the gate?

A. They just walked along the side track towards the main track.

Q. And where were they when they started to shoot?

A. They were right at the track.

Q. Which track?

A. The main track.

Q. What have you to say as to the number of shots that were fired?

A. No, I couldn't tell you that.

Q. Well, were there many or were there few?

A. I think it lasted about four or five minutes.

Q. Do you mean to say that they were shooting continuously for four or five minutes?

A. Yes, sir.

Q. What happened then?

A. Then the crowd started to run towards the west side of the track.

Q. Where did you go?

A. I was just standing in the same place.

Q. Were you down among the crowd?

A. No, sir.

Q. Did you see any of the wounded men?

A. Yes, sir.

Q. Where?

MR. McCARTER: I object as immaterial.

A. I have seen them carrying—

MR. McCARTER: One moment. We object to it as immaterial whether he saw some of the wounded men.

MR. COAN: I will re-frame the question.

Q. Did you see Alesandro Tessitore?

A. Yes, sir.

Q. Where did you see him?
A. In the barber shop.
Q. Ohlott's barber shop?
A. Yes, sir.
Q. What was he doing there?
A. He was stretched out on the floor and the doctor was working on him.
Q. Do you know where he was taken to from there?
A. I believe he was taken with the ambulance to Elizabeth.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. You were about 400 feet away, weren't you, from the station, Mr. Levinson?

A. Yes, sir.

Q. Do you remember making a statement to Mr. Sedan, the Squire?

A. Yes, sir.

Q. Was that statement correct?

A. Yes, sir.

Q. Was it correct when you told him—

MR. WESCOTT: I object to that form of the question. Did you tell him so and so.

Q. Did you tell him, "I simply was following the crowd, I saw some sparks and smoke coming from the direction of the plant, but I could not tell who was doing the firing, and cannot tell anything about it, particularly as I was about 400 feet away." Is that correct?

A. I don't recollect making a statement like this.

Q. You read English, don't you?

A. Yes, sir.

Q. Look at that statement. Isn't that your signature?

A. Yes, that is my signature all right.

Q. You signed that, didn't you?

A. Yes, sir.

Q. And swore to it?

A. No.

Q. What?

A. I don't think I did.

Q. Well, you saw Mr. Sedan, didn't you?

A. Yes, sir. I don't know who the gentleman was.

Q. And you signed a statement, your name is Jacob Levinson?

A. Yes, sir.

Q. That is your signature?

A. Yes, sir.

Q. And the statement that you signed said, "I saw some sparks and smoke coming from the direction of the plant, but I could not tell who it was doing the firing, and cannot tell anything about it, particularly as I was about 400 feet away." Now, why did you sign that?

A. Well, there was too much excitement at that time.

Q. This seems to have been on the 29th day of March. Is that the day there was so much excitement, ten weeks after this occurrence?

A. I don't remember.

Q. What?

A. Let me see. I made a statement that very same day.

Q. No, no. I am asking you about that statement there with your signature to it. Have you made another statement than this?

A. Yes, sir. I made a statement the very same day that this shooting was done.

Q. To whom?

A. I think to one of the Prosecutor's office.

Q. Did you sign it?

A. I don't recall.

Q. What?

A. I don't recollect.

Q. Was that statement different from this?

A. I couldn't tell you.

Q. What?

A. Couldn't tell you.

Q. Well, is this statement right?

A. No, I don't think so.

Q. Why did you sign it then?
A. I didn't swear to it.
Q. Why did you sign it?
A. I couldn't tell you that.
Q. Are you accustomed to signing papers that are not true?
A. No; not at all.
Q. You knew you were making a statement, didn't you?
A. Yes, sir.
Q. And you knew that these men at that time had been indicated, didn't you?
A. Yes, sir.
Q. And were you signing a statement that you did not think was true about these men?
A. Well, I believe this statement is about the same what I stated here.
Q. Then you think this statement is true, that I am showing you?
A. Yes, sir.
Q. You used to be Recorder in Roosevelt, didn't you?
A. Yes, sir.
Q. And you now say that the statement that I show you, to which your signature is appended, is correct, and correctly states the situation, don't you?
A. Yes, sir.

MR. McCARTER: That is all.

DYING DECLARATION OF ALESANDRO TESSITORE

(Exhibit P-13)

Dying declaration made by Alesandro Dessiduro at Alexian Brothers Hospital, January 19th, 1915, after having been told by Joseph Buckley, Interpreter, that Doctor Roach, resident physician of the Alexian Hospital says that he cannot recover and is going to die:

I, ALEXANDRO DESSIDURO, having been informed that I cannot live and fully realizing that I cannot recover and am soon to die, do hereby solemnly, sincerely and truthfully affirm and declare; I am employed as a laborer at the Armour Plant at Carteret, New Jersey. They had a strike there and I joined the strikers. We have been striking about three weeks. This morning a train load of men was brought to Carteret. Myself and Giovanno Ferdiso and others whose names I do not know were at the little station near the factory. There were about 25 or 30 armed men around the yard of the plant. I think they were police officers. They carried rifles. As men got off the train there were two or three hundred of us at the station. The men with the rifles attempted to shove us back. There was a yell, "Get out of there," "Get out of there," and then I heard shots. I do not know who shot me. The Superintendent of the plant was leading the men with rifles. He is a big, stout man, with a black moustache. I do not know his name. He carried a rifle and had on a black suit of clothes. When I heard "Get out of there" I ran from the station toward Carteret and was a distance of one hundred feet when I was shot in the back. I am shot

in the back and in the leg. I think I was first shot in the leg and then in the back.

We went to the station because we had heard that they were going to bring men to work from New York and we were going to tell them not to go to work, as we were on strike.

A lot of Hungarians and Italians had sticks in their hands, but I did not have any.

Francis Zizza, who boards with me, and an English speaking man called "Mike" picked me up and brought me to a barber shop. I remained in the barber shop until a Carteret doctor, who has red hair, examined me and then the ambulance came and I was brought to the hospital.

The above declaration having been read to me, I do declare it to be the truth, the whole truth and nothing but the truth.

In witness whereof, I have hereto set my hand this 19th day of January, A. D. 1915.

TESSITORE, ALESANDRO.

Witnesses:
ROBERT L. EATON,
JAMES E. ROACH, M.D.,
JOSEPH R. BUCKLEY.

The above declaration made at Alexian Bros. Hospital, Elizabeth, N. J., Jan. 19th, 1915, at about 2:25 P. M.

R. L. EATON.

Whereupon, at 4:40 o'clock P. M. an adjournment was taken until tomorrow morning, Wednesday, May 26th, 1915, at 9:30 o'clock A. M.

New Brunswick, N. J., May 26th, 1915.

Met pursuant to adjournment

ELEK NAGY, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through Interpreter Stephen F. Somogyi.)

MR. STRICKER: May we have this marked for identification now?

THE COURT: Yes.

(Statement of Jacob Levinson marked D-1 for identification.)

Q. Where do you live?
A. At Chrome.
Q. Did you live there in January last?
A. Yes.
Q. Do you know where the Williams & Clark station is on the Sound Shore Railroad?
A. Yes.
Q. State whether or not you were at that station on the morning of January 19th last?
A. Yes.
Q. At what time?
A. About eight or nine o'clock. I don't know positively. I waited for the eight o'clock train.
Q. Who else were there?
A. There were many there.
Q. And where were you?

A. I was by the depot, right in front of the shanty.

Q. And where were those many that you speak of?

A. Many of them were sitting inside of the shanty, and others were standing by the track.

Q. Did the train come in?

A. Yes.

Q. What did you observe as the train came in?

A. I saw this when they stopped the train, but I wasn't quite there at the time. They put a piece of timber across the track.

Q. Did the train stop?

A. Yes.

Q. Where did it stop?

A. About 15 or 20 yards in front of the shanty.

Q. What happened after the train stopped?

A. When the train stopped the persons watching the factory came out, they came toward the track and began to shoot.

Q. Where did they come from?

A. From Williams & Clark factory.

Q. How many were there?

A. I don't know positively. About 28 or 30.

Q. Where were they when you first saw them?

A. At the office; in front of the office.

Q. Where were they when they started to shoot?

A. They came right to the depot, about 15 or 20 steps away from it.

Q. What happened when they started to shoot?

A. They were shooting, and the people started to scatter. I also did the same.

Q. What way did the people scatter?

A. Whichever way a person could. Some towards the water.

Q. Where was the water?
A. Behind the depot.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. What made these men shoot?

A. I don't know. I simply know this, that we stopped the train in order to see whether or not any strikebreakers were on the train.

Q. And what would you have done if there were strikebreakers on the train?

A. I don't know what they would have done. I arrived just at the time of their stopping the train.

Q. Well, you were a striker, weren't you?

A. Yes.

Q. And you came there expecting persons on that train, to take the place of the strikers, didn't you?

A. My intentions were simply to go because others went.

Q. And you and others intended to prevent, by force if necessary, the going into that plant of persons to take your place, that is, workingmen.

MR. COAN: I object to that question, as far as what others intended. The question is, as I understand it, what he and others intended to do. The question is objected to so far as what others intended to do.

THE COURT: I think he was there with the crowd together, and it would be competent. Proceed. He can only tell what he knows, you know.

A. They could have gone as far as we are concerned. We could not do anything.

Q. Well, what did you go there for?

A. I don't know myself. The others went there, and I went with them.

Q. Do you know why the ties were put on the track?

A. I don't know. I wasn't there then.

Q. You testified on your direct examination that somebody put ties on the track?

A. I said it then, and I claim it now.

Q. Well, who was it put the ties on the track?

A. I don't know. I wasn't there then when it was placed.

Q. Well, do you know who put them on, even though you were not there?

A. I do not.

Q. When you got there everybody was nice and quiet?

A. Yes.

Q. Just as quiet as this court room is now?

A. Yes.

Q. And nobody had any sticks?

A. I didn't see any.

Q. How many men were there, seven or eight hundred?

A. I can't say how many there were. Around the shanty there were about three hundred.

Q. And around the track there were about three hundred more, weren't there?

A. I don't know.

Q. Well, there was a large number, wasn't there?

A. There were many there.

Q. And when you speak of the shanty you mean the railroad station in front of Williams & Clark's place?

A. Yes.

Q. Not one person had a stick or club there?

A. I didn't see any.

Q. And you didn't see anybody with any stones?

A. No.
Q. Or pieces of slag?
A. I didn't see anybody.
Q. Or a big piece of cinder?
A. I didn't see any.
Q. How long are you in this country?
A. Eleven.
Q. Eleven months or years?
A. Eleven years.
Q. Did you see a pole stuck into the track with a red sweater or a cloth on it?
A. I saw some kind of a red rag stuck up on a pole that was standing there.
Q. And how far from this rag did the train stop?
A. Stopped about forty or fifty yards away, but came on slowly.
Q. Then the train stopped twice, once forty or fifty yards away from the station the first time, and at the station the second time?
A. Yes.
Q. Did you see Julius Yeager there that morning?
A. I did not.
Q. Do you know him?
A. Yes.
Q. Do you know a man by the name of Leonard Fresini?
A. I do not.
Q. Did you see Yeager wave at that train and stop it?
A. I didn't.
Q. Did you see anybody jump on the train?
A. I did at the time when the shooting was going on, that they ran in different directions they could.
Q. Yes, but when the train stopped the first

time did you see any of the strikers jump aboard of the train?

A. Not at that time.

Q. Did you see any of the strikers jump on to the step of the locomotive?

A. I did not.

Q. When the train came into the shanty, or towards the shanty, which I understand you to say was the railroad station, where did the locomotive stop, I mean the second stop?

A. A short distance past the shanty.

Q. So that the second or third passenger car of the train were in front of the shanty?

A. I don't know, because after the shooting I began to run.

Q. Yes, but I am now directing your attention before the shooting?

A. Before the shooting it was standing a short distance away, not before the shanty.

Q. The shooting did not start, however, until the train came to the shanty, did it?

A. No, it began before that.

Q. While the train was standing still or moving?

A. The train was standing at the time of the commencement of the shooting.

Q. Where?

A. It was a short distance away. The engine was about 15 or 20 yards away.

Q. These men that you saw coming out of the factory where were they when you first saw them?

A. I saw them coming out of the big office.

Q. Did you see them come down the platform?

A. I did.

Q. Out of the door of the office?

A. I didn't see them coming out through the

door of the office, but I saw them on the platform of the office coming out.

Q. The little platform right at the top of the incline at the office, or the running board, whatever it is?

A. Yes.

Q. And you say there were 28 or 30 of them?

A. Didn't count them, but it appeared to me that there were 28 or 30.

Q. And they began to shoot as soon as they left the office?

A. No. They came close to us.

Q. How close did they come to you?

A. I can't say positively. About 15 or 20 steps.

Q. How many men were there in your group when the shooting commenced?

A. I don't know. I did not count them.

Q. I didn't ask you whether you counted them or not. I want you to give us an estimate of the number of men that were in your group?

A. In front of the shanty and at the side of the track we were there in a bunch about three hundred.

Q. These men that came out of the office, were they all together, or were they spread out?

A. They came out in a bunch.

Q. Did they remain in a bunch?

A. I can't tell you that.

Q. And were they in a bunch at the time that they were firing?

A. Yes, in one bunch.

Q. Did any one of them fire at you?

A. I don't know, because I was running.

Q. Well, most of these men were firing in the air, weren't they?

A. I didn't see that.

Q. You didn't know how they were firing?
A. The first one who gave the orders to them shot into the air. I saw that.
Q. You took it that the shot in the air was the order to shoot?
A. Yes. He also said, "Shoot."
Q. Then you ran?
A. Yes.
Q. Now directing your attention to these men that came from the office, what did they shoot with?
A. They had guns and also revolvers.
Q. Now, how many had revolvers?
A. I don't know.
Q. How many had guns?
A. The ones that I saw all had guns.
Q. Well, now, you say 28 men?
A. About that.
Q. And did every one of the 28 men have guns?
A. Those that I saw all had guns.
Q. Well, you say 28, didn't you?
A. I didn't count them.
Q. Well, whatever number you saw coming from that office, all had guns?
A. Yes.
Q. And by guns I mean shot guns or revolvers?
A. Yes.
Q. After you started to run where did you run to?

THE INTERPRETER: I didn't get that.

MR. STRICKER: Strike that out.

Q. Where did you run to after the first shot?
A. I ran towards Carteret.
Q. And where did you stop running?

A. I went a short distance and I saw one man, a townsman of mine who was shot, and I picked him up and carried him.

Q. I am asking you where it was you stopped running?

A. About three hundred or four hundred steps away.

MR. STRICKER: That will be all.

EDWARD CONLON, a witness produced on behalf of the State, being duly sworn, according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Edward, where do you live?
A. Carteret.
Q. How long have you lived there?
A. Fifteen years.
Q. Born there?
A. Yes, sir.
Q. Have you been to school any?
A. Yes, sir.
Q. How much have you been to school?
A. As far as the seventh grade.
Q. Can you read and write?
A. Yes, sir.
Q. Did you ever work at the Williams & Clark factory?
A. Yes, sir.
Q. Do you work there now?
A. No, sir.
Q. And how long did you work there before last January?
A. About nine months—ten months?
Q. What did you do there?
A. Work in the office, office boy.

MR. McCARTER: Speak louder.

A JUROR: If he will come to the front it will be better. Let him sit there.

MR. WESCOTT: Be as comfortable as you can.

Q. Have you seen the map that is there on the wall?

A. (Witness looks at map.) This is the first time I seen it.

Q. I wonder if you could go to the map there and point out where this office was you worked in for seven months?

A. I will try hard. (Witness goes to the map.)

MR. WESCOTT: If you try hard you will succeed.

(Witness indicates office on the map.)

Q. Is that it?

THE COURT: What does he point to?

MR. WESCOTT: He is pointing to a building marked office on the map.

Q. Carteret was in what direction from that office? If you don't understand the map, don't make any mistake?

A. Right this way (indicating).

Q. Now, when you went to your office, which way did you go?

A. Came down. To go to Carteret?

Q. Yes; when you went back and forth?

A. Went that way (indicating).

Q. When you went home?

A. Sometimes went up the road—up that road.

Q. Did you generally walk that way when you went to your work?

A. When I went to work I always went the road.

Q. Which way, just show us?

A. Down this way towards the office.

Q. How did you get into the office? Go in by door or gate, or what?

A. Well, it has a platform there.

Q. And where is the platform?

A. Right here (indicating), up this way somewheres.

Q. Runs along there?

A. Yes.

Q. And how high is that platform about?

A. I couldn't exactly say how high it was.

Q. How?

A. I don't know how high it was.

Q. Just take your hand and show us about how high from the floor?

A. It ran up this way (indicating).

Q. How long was it this way running along with the track about?

A. Nine or ten feet.

Q. And then it pitched down?

A. Pitched down.

Q. Towards the ground?

A. Towards the ground?

Q. And did you go up and down that platform when you went in the office?

A. Yes, sir.

Q. Was there a gate there?

A. There was a gate there right where the platform goes up, right at the end of the platform, there was a gate there.

Q. A big gate or a little gate?

A. Quite a big gate.

MR. WESCOTT: Now you can take your seat.

(Witness does so.)

Q. And you worked at this place about seven months all told?

A. Well, about eight or nine months before January.

Q. Altogether; were you working there at the time this trouble arose down there?

A. Yes, sir.

Q. And did you work there after the trouble?

A. Yes, sir; a little while.

Q. How long?

MR. McCARTER: Is that material, your Honor, how long after the trouble he worked there.

THE COURT: I don't see it does any harm, proceed.

Q. You worked there some time.

MR. McCARTER: I object.

THE COURT: I will allow the question.

A. I worked there for about a week and a half after.

Q. While you were working in that office, did you work there in the day time, or in the night time?

A. In the day time.

Q. You saw some men come there who were called deputies?

A. Well, I didn't exactly see them come there, but I seen them there next morning when I came down.

Q. How long were those men there before this trouble arose, do you think?

MR. McCARTER: What trouble?

MR. WESCOTT: You ought to know what it is by this time.

THE COURT: What?

MR. McCARTER: He said how long were these men there before this trouble arose.

THE COURT: What trouble?

MR. WESCOTT: I am sorry my friend don't understand it. We will put it in another way.

Q. How long before the 19th of January was it about that these men came there?

MR. STRICKER: We object to that question if your Honor please

THE COURT: Why?

MR. STRICKER: I submit this inquiry ought to be limited to the 19th day of January, and ought to be limited to the defendants on trial.

THE COURT: I will allow the question.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. About how long before the 19th of January did these men come there?

A. About a week and a half.

Q. Did you get acquainted with them?

A. Some of them.

Q. How often did you see them about?

A. Well, I seen some of them mostly all day they was at the office.

Q. Did you wait on them?

A. I got them tobacco or cigarettes.

Q. Did you learn their names?

A. Some of their names.

Q. Remember the names, do you, of some of them?

A. Some of them; yes, sir.

Q. Did you get well enough acquainted with those men to tell them when you see them?

A. Well, most of them.

Q. On the 19th day of January about what time did you leave home to go to the works, if you did?

A. I left the house about a quarter after seven, to go up to the postoffice.

Q. And from the postoffice you went where?

A. Down to the shop.

Q. What do you mean by shop?

A. Factory—the office.

Q. How did you go, what course did you take?

A. Well, I went down from the postoffice to where the road begins, and I seen a mob of men standing down by the station.

Q. Which way did you travel? Were you—which way were you going when you went toward the shop? The same way that you indicated on the map, over along the railroad?

MR. McCARTER: Let him say.

A. Down the road I went, the road I pointed out, down that same road.

Q. You were going face toward the factory?

A. Yes, sir.

Q. What did you see as you were going toward the factory, what first arrested your attention?

A. The mob of men down by the station.

Q. That was over to your left there, by the station?

A. To the left; yes, sir.

Q. What was the next thing you noticed as you were going toward the office?

A. Well, I seen that gang there, I started to run, and then I seen the deputies coming out alongside of the fence.

Q. You what?

A. Saw the deputies going out alongside of the fence.

Q. Where did these deputies come out, what did they come out of, the office?

A. From the office gate.

Q. How did they get out of the fence, out of the yard I mean?

A. Well, the platform from the office is outside of the fence.

Q. Did they go down that platform?

A. Yes, sir.

Q. How close to them were you?

A. I couldn't exactly say.

Q. Well, about how close? Give us your best judgment?

A. Well, I will say about three-quarters of a block anyhow.

Q. Three-quarters of a block. Can you go to the map there and show us where you were about, according to your best judgment, when you saw these deputies come out of the factory, or out of the fence? That is to say, do it if you can. Don't make any guess that you are not reasonably sure of.

A. I can't do it on that map.

Q. You can't tell it on the map. Very well. Can you tell anything about the distance you were from the fence by the curve in the road there?

A. When they were going out I was up by the

track, away up, only it ain't on that map, I don't think.

Q. Did you keep on going towards the factory as they came out?

A. Yes, sir.

Q. How close did you get to them, the deputies, about how close?

A. Well, from here to that wall and back.

Q. From you to the wall in the back?

A. And back.

THE COURT: Twice the length of this court room, is that what you mean?

THE WITNESS: Yes, sir.

Q. Did you see these deputies have anything?

A. Well, when they were going out, I seen them have clubs.

Q. Did you see them have anything else?

A. Didn't see them have anything else going out.

Q. Did you see them have anything after they got out besides the clubs?

A. Well, I seen them have guns.

Q. Now, where were they when you saw them have guns?

A. A little past the fence, corner of the fence.

Q. Could you tell how many of them about had guns?

A. No, sir; I couldn't exactly say how many.

Q. What?

A. I couldn't exactly say how many had the guns.

Q. No, I know you can't give us the number. Did you see more than one gun?

MR. STRICKER: I object to that.

THE COURT: I think I will allow it. You may take an exception. Proceed.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. Yes, there was more than one gun there. There was quite a few guns. The ones that I could see most all had guns.

Q. What did these men do that you stood there and looked at?

A. Well, they had taken their guns out and was walking over.

Q. Walking over where?

A. Towards the gang.

Q. What, if anything, did you see any of the men do as they walked over towards the gang?

A. I didn't see them do anything. I didn't take notice.

Q. Did you hear any noises?

A. No, sir.

Q. Heard no shooting?

MR. McCARTER: I object. I do not think this witness ought to be led.

MR. WESCOTT: He shakes his head no.

THE COURT: I will allow it. Proceed.

Q. Do you mean that you heard no shooting or noise while they were walking over?

MR. McCARTER: I object.

A. No, sir.

THE COURT: I will allow it.

A. No, sir.

Q. Well, where did you go—did you stay there and watch these men, watch this trouble and excitement?

A. Well, I walked around to the bend where you go in the office, and I stood there watching them.

Q. When you stood there what did you see?

A. Well, I looked over and I seen the train was just coming.

Q. Go on and tell us what you saw?

A. I seen the train coming, it was going slowly, and when the train was going right slow past the station I seen some of those men shooting under the cars.

Q. Some of what men?

A. Some of the deputies.

Q. Can you tell about how many you saw shoot under the cars?

A. About four or five.

Q. Where was the car then, when you saw them shoot under the car?

A. It was right past the station.

Q. Was the train going then?

A. Yes, it was going slowly.

Q. What else did you see?

A. Well, while the train was in motion, going up slow, I seen a couple of them deputies running around the end of the train.

Q. Which end?

A. The rear.

Q. What else did you see?

A. Well, then when the train pulled up I seen all the strikers running in all directions, and seen the deputies firing at them.

Q. These men that you saw come out of the office?

A. Yes, sir.

Q. Give us the name of one of them that you can recollect?

MR. McCARTER: One moment. One of what?

MR. WESCOTT: One of the deputies.

MR. McCARTER: That he saw? That question is very ingenious. It takes an Attorney General to invent it, I think.

MR. WESCOTT: And an ex-Attorney General to object to it.

THE COURT: Read the question.

Q. (Question repeated by stenographer.)

MR. McCARTER: He has already been asked some time ago if he can recall the names of some of the deputies he made acquaintance in the factory, and that question is designed, whether purposely or not, I don't know, to enable him to give the name of one of the men whom he met casually in the factory as being—to give the impression that is the name of the man that he saw outside. I think the thing to do is to point out the man.

THE COURT: No. I think this witness testified he was in the factory, and he learned to know these men, he learned to know their names. He is now asked to give the name, if he can, of anybody who was in that crowd of deputies. I think that is a perfectly competent question and I will allow it and you may take an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. McCARTER: Your Honor has not observed the point I make. It does not call for that. It does not say the names of the men he saw shooting.

THE COURT: In this crowd.

MR. McCARTER: It does not say that.

THE COURT: If the question is not broad enough, make it broad enough, Mr. Attorney General.

MR. McCARTER: That is just the point.

Q. Ed., you saw some deputies come out of that office, you have told us about?

A. Yes, sir.

Q. Saw them walk over towards the car, and they had guns in their hands. You saw all that, did you?

Mr. Wescott shakes his head affirmatively.

MR. STRICKER: Well, can't he say?

A. Yes, sir.

Q. Give us the name of any man that you saw in that crowd that came out of the office, walked down the platform, and went over towards the depot with guns, give us the name of any one of them?

A. James Bavier.

Q. Is he here?

A. Yes, sir.

Q. Go point him out? Get out of your [illegible] and go point him out?

A. (Witness indicates.)

MR. WESCOTT: Stand up.

Q. Is that the man?
A. Yes, sir.
Q. Can you give us the name of anybody else?
A. The ones just here?
Q. No. That you saw in that crowd.
A. I seen Patterson.
Q. No.

MR. STRICKER: One moment.

MR. WESCOTT: I will say the men who are here.

MR. STRICKER: One moment.

Q. Well, you say Patterson. Is Patterson here?
A. No, sir.
Q. Anybody else in this bunch of men sitting here?
A. Mullen.
Q. Point Mullen out.
A. (Witness indicates.)
Q. Is he the man?
A. Yes, sir.
Q. Anybody else?
A. McLaughlin.
Q. Point McLaughlin out?
A. (Witness indicates.)

MR. WESCOTT: Stand up, McLaughlin.

Q. Was he the man?
A. Yes, sir.
Q. Anybody else?
A. Wallace.
Q. Where is he?
A. (Witness indicates.)

MR. WESCOTT: Stand up, Wallace.

Q. Is that the man?
A. Yes, sir.
Q. Anybody else?
A. That lad. I don't know his name.
Q. Which one?
A. (Witness indicates.)

MR. WESCOTT: Stand up.

Q. You saw him there too?
A. Yes, sir.
Q. Point out any others here that you saw there?
A. This one here (indicating).

MR. WESCOTT: Stand up, sir.

Q. Do you know his name?
A. No, sir.
Q. Now, any of the rest of them?
A. One right there (witness indicating).
Q. That man was there?
A. Yes, sir.
Q. Any of the rest?
A. That lad there sitting in the middle.

MR. WESCOTT: Stand up, sir, please.

Q. Was he there?
A. Yes, sir.
Q. Any of the rest?
A. That lad (witness indicates).
Q. He was there, was he?
A. Yes, sir.
Q. Point out any others there that you saw there?
A. That is all that I see.

Q. Any of the rest of these ten men there that you recognize?

A. No, sir.

Q. Now be sure. Look at them carefully.

A. That is all.

Q. That is all that you can recognize now. That is all. Take your seat in the witness chair.

THE COURT: Is there any way to get on the record which of these ten were not identified by this witness?

Q. Can you give us the names of any of the others now that you have identified as having been there besides the three names that you have given us, or four names? Can you think of the names of any of the rest of them?

A. Only Patterson, that is all that I can remember.

Q. And these nine men that you pointed out here they were men that you got acquainted with in the factory?

MR. McCARTER: Please don't lead.

Q. (Continued.) Or not?

MR. McCARTER: I object to the question as leading. I think that is too improper, your Honor.

THE COURT: Well, he said acquainted or not. I will allow the question. Proceed.

A. I didn't get you?

Q. How?

A. I didn't get you, I don't know what you said.

Q. These nine men here that you pointed out are the men that you got acquainted with in the factory?

A. I got acquainted with them; yes, sir.

Q. Do you know whether or not they went in the factory by different names—these men?

A. No, sir; I do not.

Q. Didn't hear them called different names?

MR. McCARTER: I object.

THE COURT: What is the question?

MR. WESCOTT: All right.

THE COURT: You withdraw the question. Mr. Attorney General, I think in the interest of justice that we ought to have the name of the person he has identified. The jury would want to know that. Ask the person that he did not identify to stand up, or undertook to identify.

(The man stands up.)

THE COURT: (Addressing man standing up.) What is your name?

THE MAN STANDING UP: John Smith.

THE COURT: John Smith, that is all.

Q. You don't know this gentleman, Smith?

A. No, sir.

MR. McCARTER: Is that fair?

THE COURT: No.

MR. McCARTER: Do you think that is fair?

MR. WESCOTT: I do. I think it is perfectly fair.

MR. McCARTER: He told his Honor he didn't know him.

MR. WESCOTT: It seems to me that is the fairest thing in the world. I don't want to bring

Smith in where he ought not to go. You ought to thank me, not condemn me.

Q. Can you tell me now whether or not you saw these men whom you have pointed out here with weapons when they came out of the factory?

MR. McCARTER: We object to the question as leading. I don't think the question is proper, your Honor.

THE COURT: I think it is a little leading under the circumstances.

Q. Tell us whether or no these men you have pointed out here had anything in their hands when they came out of the factory and went toward the station?

MR. STRICKER: We object to that.

THE COURT: I will allow that.

MR. STRICKER: I pray an exception.

THE COURT: Exception allowed.

Q. (Repeated by the stenographer.)

A. Well, when they came out of the factory they had clubs in their hands.

Q. Anything else?

A. Some of them there had guns in their hands when they were coming out. The rest I couldn't say whether they had or not.

Q. After this shooting that you have told us about, where did you go?

A. After it was over, well, I walked into the office.

Q. How long did you stay there?

A. I stood in there until they came in?

Q. Who came in?

A. The deputies came in.

Q. Have you any idea about how many of them came in?

A. I think just as many came in as went out.

Q. What did you see them do when they came in?

A. I seen some of them putting their guns away.

Q. Where did they put them?

A. Put them in the little closet in the office.

Q. Who were the men that you saw putting the guns away in the little closet?

A. I don't know. What do you mean by who?

Q. Can you give us the names of any of them?

A. I seen Mullen.

Q. Anybody else?

A. I think the lad over there, I don't know what his name is.

Q. Which one, point him out?

MR. STRICKER: This one?

A. No. Not you, next to you, the lad with the little moustache.

Q. You saw him put a gun away?

(A man stands up.)

Q. Is that the man you mean?

A. Yes, sir.

Q. Any of the rest of them that are before you there?

A. McLoughlin.

Q. McLoughlin. Did you see any of the rest of them put guns in the closet?

A. That is all I can remember.

Q. Were there others who put guns in the closet whose names you don't remember?

A. That is all I can remember who put them there.

Q. Did you remain around the factory or office the balance of the day?

A. I went up and down the road a couple of times during the day.

Q. Did you see anybody come there afterwards and get these guns?

A. No, sir.

Q. Before this 19th day of January when you were about that office, did you see any guns or ammunition there?

A. Well, I always did see guns in the office, and bullets there.

Q. Did you see ammunition there?

A. I don't know what you mean by ammunition.

Q. Cartridges—shells?

A. I seen shells; yes, sir.

THE COURT: I would like to ask one question. When you say guns, what do you mean by guns, revolvers or weapons with longer barrels?

A. Revolvers—them small guns.

By MR. WESCOTT:

Q. Were you in the office when these men came back, the deputies?

A. I couldn't say exactly where I was, I was inside the railing in the office.

Q. Did they come back together?

A. Well, they came back together.

Q. Together?

A. Yes.

Q. Can you recall whether they stopped outside of the office or whether they came right in?

A. They stopped right out at the corner of the fence.

Q. What did they do there?

A. They stood there standing, that is all I can say they were doing.

Q. Where were you then?

A. In the office.

Q. How did you see them if you were in the office, and they were outside?

A. Out the window.

Q. About how long did they stand there?

A. A couple of minutes.

Q. Then what did they do?

A. They came in.

Q. Did you notice what they did after they came in and put up their guns?

A. Well, they were sitting in the room there.

Q. Sitting in the room?

A. Yes.

CROSS EXAMINATION:

By MR. McCARTER:

Q. Edward, do you still live in Roosevelt?
A. Yes, sir.
Q. You always lived there?
A. Yes, sir.
Q. Take your hand away from your mouth, so we can hear you. What time were you ordinarily due at the factory?
A. Well, when there was no strike going on, I used to get down there a quarter to seven or twenty minutes to seven.
Q. You were late this morning, weren't you?
A. While the strike was going on, I was taking it easy.
Q. Just sit up and don't lean back that way. The strike was going on and you wanted to have it easy, so that you didn't leave the house until after seven?
A. After seven.
Q. What?
A. About a quarter after seven.
Q. And how close is your house with reference to the postoffice?
A. Well, my house is on the same road as the road you go down to Williams & Clark.
Q. Was the postoffice on the way to the factory, or did you have to go out of your way to get to the postoffice?
A. I had to go a little out of the way.
Q. A little out of the way; about how far is your house from the factory, if you don't go out of your way?
A. I don't know.
Q. About half a mile?

A. I couldn't say how far it is.

Q. You know about the distance of a half a mile, don't you?

A. Yes, sir.

Q. Do you think your house is a half a mile away from the factory?

A. I don't think it is.

Q. Well, about a quarter of a mile? I don't know, I am asking you for the information, the jury don't know either?

A. To tell you the truth, I don't know myself.

Q. How long does it take you to walk ordinarily to the factory from your house, do you suppose?

A. Well, five or six minutes.

Q. Five or six minutes. Ordinarily when you go to the factory about seven o'clock, what time do you have your breakfast?

A. Got up about six o'clock and eat about a quarter after seven—a quarter after six.

Q. What time do you leave the house to get to work at seven o'clock?

A. Well, I got there—

Q. No, no, ordinarily I mean, not at the time the strike is on.

THE COURT: I understand he goes there before seven ordinarily. He testified to that.

Q. Are you there ordinarily before seven?

A. Yes, I hadn't no regular time to get there. I usually get there before seven.

Q. What time would you ordinarily—when the strike isn't on—start to work, about seven?

A. Start to work—some mornings I go down there at six o'clock, some mornings at quarter after six and some mornings ten minutes to seven.

Q. You had no regular time. Was that your

duty to always get the mail, or only during the strike?

A. Always to get the mail.

Q. So this morning you went to the postoffice?

A. Went to the postoffice first.

Q. And got your mail. And then you walked down towards the factory?

A. Yes.

Q. Did you notice a crowd of men at the station?

A. Yes.

Q. Did you notice if they had clubs?

A. Who did I notice? The strikers?

Q. Yes, strikers, the men at the station.

A. I noticed a couple of clubs and a couple of iron pipes.

Q. How far were you away from the strikers when you say that some of them—you saw have a couple of clubs and a couple of iron pipes. How far were you away?

A. I couldn't exactly say how far it was.

Q. Well, were you as far as double the length of this room?

A. Every bit of that. I guess it must be a little more than that.

Q. Did you notice any obstruction on the track?

A. No, sir.

Q. Did you notice any red flag or red jersey?

A. No, sir.

Q. Did you notice the train stop before it came to the station?

A. No, sir.

Q. Did you notice a man jump upon the front of the engine?

A. No, sir.

Q. Could you see the engine?

A. I never knew there was any tie or—

Q. I didn't ask you that. I asked you if you could see the engine?

A. I could see the engine.

Q. Did you notice any men get on front of the engine?

A. No, sir.

Q. Did you notice any of these strikers get up on the platform of the train?

A. No, sir.

Q. Were you watching the crowd?

A. Well—

Q. The strikers?

A. I was—I was watching the crowd.

Q. And the crowd was over by the station, in that neighborhood, was it?

A. Yes, sir.

Q. How far is it from the station to the office?

A. I don't know how far it is.

Q. Well, is it the length of this room?

A. Every bit of that.

Q. Yes, and a little more. Now how near to the office of the factory was this crowd of strikers. Were they over as near as the other track, or were they nearer to the main track upon which the train ran?

A. Well, right on that. Some of them were standing on that.

Q. Did the crowd stretch over towards the factory a little?

A. No, sir.

Q. None of them toward the factory?

A. No, sir.

Q. And you were watching them?

A. Well, I wasn't watching them closely. I was watching everybody.

Q. Watching everybody. Were you surprised to see that crowd there?

A. Well, yes, sir.

Q. And interested, weren't you?

A. Yes, sir.

Q. You didn't usually see a crowd of that size around there?

A. Not down that far; no, sir.

Q. You were wondering what they were going to do, weren't you?

A. Well, I thought they were going to stop the men from going to work off the train.

Q. Yes, and you wanted to see if they were going to do that, weren't you?

A. I wanted to see some excitement.

Q. Were these men shouting any, the strikers?

A. I didn't get that question.

Q. Repeated by stenographer)?

A. They wasn't shouting until—they were running when the shooting was going on.

Q. There was no shouting before you heard some shots?

A. No hollering before the shooting began.

Q. They were perfectly quiet there?

A. Yes, sir.

Q. Carrying these iron pipes and these clubs perfectly quiet as far as you can tell?

A. Yes, sir.

MR. WESCOTT: Two iron pipes.

Q. Perfectly quiet?

A. As far as I—

Q. You were a good deal further than the double length of this room from the rioters at that time, weren't you?

MR. WESCOTT: Don't call them rioters.

Q. Strikers, weren't you?

A. Every time I got a little closer going down the road.

Q. But when you first observed that you were a good deal further than the double length of this room?

A. Yes, sir.

Q. And the factory was further away yet, wasn't it?

A. Further away? I don't know whether it was or not.

Q. What?

A. I don't know whether it is or not.

Q. Don't you know—you can't say whether the factory was further away than the strikers from you?

A. I don't know whether it was or not. I wasn't watching the factory.

Q. Just make a picture, Eddie, in your mind's eye now of the scene. Don't you know that the factory was much further off from your position, walking down there, than the strikers were?

A. I don't know whether it was or not.

Q. You can't say about that. All right. Well, now, how long a time had this strike been on?

A. I don't know what you mean.

Q. Well, had the strike been a week?

A. Before the shooting?

Q. Yes, before the 19th?

A. Week and a half. It might be a little more.

Q. Were you around when the window panes were broken?

MR. WESCOTT: I object.

THE COURT: There has been no window panes broken that I know in this case.

MR. McCARTER: I want to test his accuracy. He says he was there and got acquainted with these men. I want to see if he was there when the window panes were broken.

THE COURT: You must find out what window panes were broken. I have not heard of any.

Q. Were you ever down at Liebig's.
A. Once in awhile.
MR. WESCOTT: This is not cross examination. That is a mile away. I object.

THE COURT: I will allow it to a certain extent.

MR. WESCOTT: This witness has said nothing about window panes being broken in the cross examination; he don't know anything about these things.

Q. Did you see any of the deputies at Liebig's that you have recognized?
A. I don't know what you mean.
Q. What? You have recognized some men here, haven't you?
A. Yes, sir.
Q. Did you see any of them down at Liebig's?
A. No, sir.
Q. Do you think that you were nearer the strikers or nearer the factory when you first observed the deputies?
A. I don't know.
Q. What?
A. I don't know if I was nearer to the factory or to the strikers.
Q. Can you tell this jury which was furtherest away, the factory or the strikers, as you walked

down that morning? The factory was further off, wasn't it?

A. I don't know.

Q. What?

A. I never measured.

Q. I don't suppose you did, but don't you remember that the factory was much further off than the strikers from you?

A. There is the factory there, and there is a track there, and there is an office there. There is everything there.

Q. I am talking about the office and the platform that you spoke of.

MR. WESCOTT: Why don't you say the office and the platform?

Q. Wasn't that part of the factory further away from you than the strikers were at the time than we have been talking about?

MR. WESCOTT: What part of the factory? This factory covers a great territory.

THE COURT: He is asking about the office now. He wants to know whether the office or the strikers were furtherest away from you.

A. Well, I told him I couldn't tell him.

Q. You can't say that?

A. No, sir.

Q. How many men do you think came out of that platform and down outside of the fence?

A. 20 or 22.

Q. Did you count them?

A. I did not. Just making a guess at it.

Q. Could you distinguish them when they were on the platform, or before they came out of the fence?

A. I don't know what you mean.

Q. Could you recognize them when you first saw them?

A. Well—

THE COURT: Use some other word besides recognize.

Q. Did you know each one of them, or any of them by name the moment, or as soon as you observed them right by the gate, or at the office?

A. I did not.

Q. How far did they walk before you did recognize them, or identify them?

A. I don't know what you mean by how far I walked.

Q. How far did these deputies proceed, after they left the fence, before you did see anyone whom you knew or recognized?

A. I don't know what you mean.

Q. Well, I understood you to say that when you first saw them inside of the—right by the office, you could not tell who they were, you assumed they were deputies, but you could not recognize this one or that one or the other one?

A. No, sir.

Q. How far had they gone before you did recognize them? That is what I am trying to get at.

A. Well, pretty near to the corner of the fence.

Q. Pretty near to the corner of the fence. Well, did they go the direction of the fence? Did they keep following the direction of the fence?

A. Well, the fence—he asked me did they follow the fence.

Q. You spoke about near the corner of the fence. I ask you if they kept close to the fence,

or if they did not keep close to the fence as they came out?

A. Well, they was all in a bunch. I couldn't say who was to the fence or—

Q. What?

A. I couldn't say who was near the fence and who wasn't.

Q. You told me a moment ago that you could not understand what I meant when I asked you if you could identify. You did understand Attorney General Wescott when he asked you that question, didn't you?

A. Well, he explained the question.

Q. You had been talking with him before, hadn't you?

A. Well, yes.

Q. At Trenton?

A. No, sir.

Q. Where?

A. New Brunswick.

Q. How many times?

A. Twice.

Q. Half a dozen?

A. Twice.

Q. How many times have you talked with this young man, Mr. Lanigan?

A. The first lad?

Q. Yes, the first one?

A. Twice.

Q. Same time that you talked with the Attorney General, or other time?

A. Same time.

Q. Didn't you talk with Mr. Lanigan yesterday afternoon here in the witness room?

A. Who?

Q. You?

A. Well, who?

Q. This gentleman?
A. What witness room?
Q. Outside here?

THE COURT: Did you talk to him yesterday any time?

THE WITNESS: Well, I got a cigar off him. I asked him for a smoke.

Q. So that is another time that you talked with him, wasn't it?
A. Another time? You don't count—
Q. Twice before that?
A. That ain't got nothing at all to do with this case.
Q. Have you talked with this handsome gentleman with the eyeglasses, Mr. Voorhees? Not that Mr. Lanigan is not handsome, but I think Mr. Voorhees is a little more so. Have you talked with him?
A. Yes, sir.
Q. How many times have you talked with him? Several, haven't you?
A. Couple of times.
Q. They were not the same time you talked to Attorney General Wescott, were they?
A. Well, yes.
Q. Same occasions?
A. Same, but there were lots of times I see him I would speak to him.
Q. Haven't you talked about this case with Mr. Voorhees here when you have not talked to the Attorney General, on separate occasions?
A. I don't know whether I did or not.
Q. As a matter of fact you remember, don't you, that you talked with him when Mr. Wescott

was not around, about this matter? You remember that?

A. Well, about the case I didn't. He was there when Mr. Wescott was there.

Q. Where was that, when Mr. Wescott was there?

A. Over in the Prosecutor's office.

Q. When was that? When were these two occasions?

A. I don't know.

Q. You have talked to Mr. Peltier about it, haven't you, that chap (indicating)?

A. He was there. I talked to him once, at the same time when Mr. Wescott was there.

Q. You have talked to him when nobody else was around too, haven't you?

A. About this case?

Q. Yes.

A. No, sir.

Q. At Carteret or Roosevelt?

A. No, sir.

Q. Never have?

A. No, sir.

Q. Didn't talk to him at the plant of Williams & Clark?

A. I never knew him then.

Q. Never talked to him at the plant of Williams & Clark?

A. No, sir.

Q. When did you first make Mr. Peltier's acquaintance?

Q. When? The last time I was up here to the Grand Jury.

Q. You were talking to him this morning, weren't you?

A. To who?

Q. Mr. Peltier in this Court House, that gentleman who stood up?

A. Talked to him?
Q. Yes?
A. He told me I am next, that is all.
Q. You talked to him this morning, didn't you, before the court—before you came in here?
A. Sure. He told me I am next.
Q. That is all he said?
A. That is all.
Q. What?
A. That is all.
Q. Hadn't he talked to you before that this morning? He had talked to you about your testimony, the men you were going to point out, this morning, didn't he?
A. He did not.
Q. Are you sure about that?
A. I certainly am.
Q. What?
A. Certainly I am.
Q. Did you ever talk to Mr. Revolinsky, the Sheriff's man, on the day of the shooting at Roosevelt?
A. I don't know whether I did or not.

MR. McCARTER: Let Mr. Revolinsky come in. Mr. Revolinsky, step forward, please.

Q. Do you remember seeing that gentleman down at Roosevelt the day of the trouble, after it all was over?
A. I remember seeing him.
Q. Didn't you tell him that day, right down there, that the time the shooting took place you were up getting the mail?
A. Who, me?
Q. Didn't you tell him that?
A. I did not.

Q. Did you know that Mr. Revolinsky was one of the Sheriff's men?

A. I didn't know what he was.

Q. Do you remember talking to him?

A. Well, I talked to him.

Q. The day of the occurrence?

A. I don't know whether I talked to him that day or not.

Q. How long after the shooting did you get in the factory?

A. How long after?

Q. Did you get in the factory?

A. I didn't time it.

Q. Well, was it five minutes or fifteen minutes or twenty minutes or an hour.

MR. WESCOTT: What is the day you asked him if he saw Revolinsky?

MR. McCARTER: The day of the occurrence.

Q. (Repeated by the stenographer)?

A. Well, it was about three minutes.

Q. About three minutes?

A. I couldn't say exactly how long it took me.

Q. Well, you think it was not more than five minutes anyway after the shooting was over that you were in the factory, is that right?

A. Well, I didn't go in the factory.

Q. You did not go in the factory?

A. I went in the factory.

Q. Well, the office, if you will. How long was it after the shooting was over that you got in the office? About five minutes?

A. Five minutes? It didn't take five minutes. A couple of minutes I said once. Two or three minutes.

Q. Do you remember meeting Mr. Williams when you came in there?

A. Certainly I do.

Q. He saw you come in, didn't he? He was there?

A. I don't know. I don't know who Mr. Williams is.

Q. Why did you say you remembered him just now?

A. Well—

Q. Why did you say you remembered him just now if you didn't know who he is? Tell me that, Edward? Why did you tell me just now that you certainly remembered seeing Mr. Williams?

A. Well, I didn't want to say it. It went out anyway.

Q. What is that?

A. (Repeated by stenographer.)

Q. Is that the best answer you can give me, Edward, to the statement I asked you why you spoke of having seen Mr. Williams when you came in the office? Is that the best answer you can give me, it went out anyhow, although you didn't want to say it?

A. That is the best answer.

Q. It is a fact, isn't it, Edward, that Mr. Williams was there when you went in the office, and that that was at least twenty minutes after the shooting was over?

A. It is not.

Q. When you came in the office and saw Mr. Williams—

A. I didn't see no Mr. Williams at all.

Q. One moment. Let me finish the question.

A. Trying to put something over.

Q. You didn't see him at all?

A. No.

Q. You now say you did not see him at all inside or outside?

A. Well, I seen him inside—I seen him outside; I didn't see him inside.

Q. Where did you see him outside?

A. I don't know what Williams you are talking about.

Q. Is there a man named Williams—

A. Are you trying to pull something over?

Q. What?

A. Are you trying to pull something over?

Q. Do you know Mr. J. D. Williams, who is posted right in front of the office? Who has a position where he sits right in front of the office?

A. Williams?

Q. Yes. You know him, don't you?

THE COURT: Answer. You must know whether you know such a man or not.

Q. Right on the office platform isn't there a man named Williams who has a position where he sits right on the office platform? You know him, don't you?

A. I do.

Q. And didn't you see him that morning?

A. See him where?

Q. There at that post, at that place where he sits?

A. I did not.

Q. And didn't you tell him that morning that you heard the shots and took good care not to come down until the crowd had gone back up the railroad?

A. I did not.

Q. You say that you noticed some—you were able to recognize some of these men who sit here

as having been out there. Were they by the fence at the time you recognized them or were they over toward the station?

A. Well, they were going along the fence, pretty near to the end of the fence.

Q. Close to the fence?

A. I don't know close to the fence. I didn't go over.

Q. Come down here to the map. Stand right here, please, Edward. Now here is the office you pointed out already, and this is marked "the fence." The fence goes out here, you see?

A. Yes.

Q. Over here is the railroad station?

A. Yes, sir.

Q. And you say you were down here somewhere, I don't know where?

MR. WESCOTT: No. he didn't say that.

MR. McCARTER: He said he wasn't able to point out where he was. Down there somewhere.

Q. You see the fence, do you, running right along here from the office?

A Yes.

Q. Whereabouts with reference to that fence were these deputies when you saw some men, whose names you knew?

A. Right here (indicating.)

Q. Right in front of the letter "F"; is that right?

A. Well, I can't say where. Right down here somewhere.

Q. They had not reached the turn yet of the fence?

A. Well, some of them had reached the turn.

Q. Some had reached the turn and some hadn't?

A. Yes.

Q. Which had reached the turn?

A. I can't remember which or who?

Q. Which ones of those that you have named this morning had reached the turn?

A. I don't remember which, or who?

Q. Which ones of those that you have named this morning had reached the turn?

A. I don't remember who reached the turn or who didn't. All I remember seeing there. That is all.

Q. And they were over there near the corner of that fence?

A. I didn't see near the corner. I didn't see where they were.

Q. You told us just now they were—

A. Well, yes, the bunch, but not the ones that I pointed out.

Q. Where were they when you recognized them, that is what I am trying to get at?

A. —I just told you. I didn't say the ones I picked out. I said the bunch.

Q. Where were those that you recognized when you recognized them, that is what I am trying to get at?

A. I don't know what you mean.

Q. Well, you say you saw Williams and you saw McLaughlin. Now where were McLaughlin and Williams when you saw them?

A. Where were they? They were going out.

Q. I know. How far had they gotten from the fence, that is what I am trying to get at?

A. I don't remember how far they were.

Q. Can you say who did the shooting?

A. I don't know what you mean, who did the shooting.

Q. Whether strikers or the deputies?

A. Who did the shooting?

THE COURT: That is the question, who shot the guns.

THE WITNESS: The deputies did, of course. The strikers did not.

Q. Are you sure about that?

A. Certainly I am.

Q. What makes you sure?

A. What makes me sure? I know it. I seen it.

Q. Can you identify a single deputy that did fire a shot?

A. Well, I can't point them out who were shooting.

Q. So that you can't point out a single deputy?

A. Only Patterson, I can point him out, that he was shooting.

Q. With the exception of Patterson, you can't point out a single one?

A. I can't point them out who was doing the shooting. Whoever was out there was shooting.

Q. Do you know who fired the first shot?

A. I don't know who fired the first shot.

Q. You are not able to say, are you, that you saw a single deputy shoot, outside of Patterson?

A. I don't know what you mean.

Q. Did you see a single deputy who you knew was a deputy shoot, except Patterson?

A. Who I knew, I knew they were all deputies that were shooting.

Q. Which one did the shooting besides Patterson?

A. Well, I can't say.

Q. Did you see more than four or five shoot?

A. Shooting under?

Q. Did you see more than four or five deputies shoot?

A. Shooting where, under the car?

Q. Anywhere?

A. I saw four or five shooting under the car; when the train pulled up I seen them all shooting, but I can't pick out this one and this one, and that one.

Q. Do you remember being interviewed on the 3rd of March by a Mr. Keller, and by Mr. Oliver?

A. I do.

Q. And making a statement?

A. Yes.

Q. Have you ever seen either of them since?

A. I did not.

Q. And you have seen the Attorney General and Mr. Lannigan and Mr. Voorhees and Mr. Peltier since, haven't you?

A. I did.

Q. Twice each?

A. I don't know—if it was after that.

Q. Two or three times?

A. I know it was once after that anyhow.

Q. What?

THE COURT: He said it was once after that.

Q. And you can read and write, can't you?

A. Oh, I can a little bit, I am not an expert at it.

Q. You say you don't know whether you can read?

A. I can read a little bit. I can't read words as big as a house.

Q. You said you went through the seventh grade?

A. I didn't go through. I went up to the seventh grade and I resigned.

Q. Well, were you able to read?

A. I can read.

Q. By the time you got to the seventh grade?

A. I can read.

Q. And you can write, can't you?

A. I can write.

Q. And you usually collected the mail every morning, that was part of your duty?

A. I did.

Q. Did you sort it out, sort out the mail after you collected it?

A. Sort it out?

Q. Give the mail to the different people?

A. I only got the company's mail down there, and Keller's mail, that is all.

Q. What did you do with the mail after you got it?

A. If it was for Rothman, I put it on his desk; if it was addressed to the Williams & Clark, or Keller, I put it on his desk.

Q. So you were able to do that. Now, did you ever see Mr. Keller or Mr. Oliver before, did you ever see them before the time you have referred to?

A. I don't know what you mean.

Q. You don't know what I mean by that. You remember the occasion when you met Mr. Keller and had a talk about this thing and signed a paper?

A. I didn't have—no talk with Mr. Keller.

Had a talk with Mr. Oliver?

A. Oliver.

Q. Have you seen him since that occasion?

A. No, I didn't see him since.

Q. Is that your handwriting (showing paper to witness)?

A. Yes, that is her.

Q. That is her. And you can read the statement which you signed, can't you? Can you read it, Edward?

A. Do you want me to read it out loud?

MR. McCARTER: No.

THE COURT: No, but are you able to read it?

A. I can read it.

Q. You remember swearing to this before Mr. Keller?

A. Yes, I do.

Q. Were you telling the truth when you swore to that statement? Edward, were you telling the truth when you signed it?

A. The statement is—

THE COURT: No, no; answer that.

Q. Were you telling the truth when you signed and swore to that statement; now, answer that.

A. I told the truth; I didn't tell this though.

Q. What?

A. I didn't say none of that what is on here.

Q. That is your signature, isn't it?

A. That is my name on there, but it isn't what I give.

Q. Didn't you write your name below there?

A. Yes, sir.

Q. And you swore to it?

A. Yes, I did, but I didn't give that though.

Q. The paper that you signed says: "I identified eleven of the deputies at the county jail; I saw these 11 deputies the day of the shooting. I

don't know whether the deputies or the strikers did the shooting. I couldn't identify one of the eleven as having fired a shot. I didn't hear a single shot. I heard them all at once, and I could see smoke going up in the air. I saw some of the strikers with clubs, iron pipes, sticks. I don't know who fired the first shot." Do you say that you didn't sign and swear to that?

A. Well, I signed my name.

Q. What?

A. He didn't let me read that.

Q. He didn't?

A. He didn't.

Q. He didn't?

A. He didn't; the other lad read it out; what do I know.

Q. Who?

A. The lad with him, the lad with Oliver read it out to me.

Q. Mr. Keller?

A. No, the other lad.

Q. He read it out to you, didn't he?

A. Yes, sir.

Q. Was there a young man with Mr. Oliver?

A. There was.

Q. What was his name?

A. I don't know.

Q. And he read something to you, didn't he?

A. He did.

Q. He read it out to you?

A. Yes.

Q. Is it or is it not true that "you don't know who fired the first shot"?

A. Well, as far as I know—

Q. Is that true, or isn't it. Answer that question?

A. Well, all that on there I didn't say. That is all there is to it.

Q. What is that?

A. I didn't say none of that there. I told him what I told you. He must have changed it.

Q. He changed it?

A. Yes.

Q. You signed it?

A. Yes, I signed it.

Q. And swore to it?

A. He was writing my statement in shorthand.

Q. You didn't sign this in shorthand, this is in long hand, isn't it?

A. What I signed was typewritten too.

Q. Typewritten?

A. Yes.

Q. Who did you sign a typewritten statement for?

A. Mr. Oliver was there.

Q. A typewritten statement?

A. Yes.

Q. And do you know what became of that?

A. I don't know what became of it.

Q. Well, now I want to know whether it is true you don't know whether the deputies or the strikers did the shooting?

A. I didn't say that.

Q. I said did you say that is true?

A. What do you mean is it true?

Q. You signed that?

A. I signed it. I didn't sign that paper there.

Q. Is that your signature?

A. That is my writing there, yes.

Q. Did you sign it?

A. I signed the paper that was typewritten.

Q. Did you sign that?

A. That is my writing, yes.

Q. That isn't typewritten, is it?
A. What?
Q. This paper? This paper that is written, it is not typewritten, is it?
A. Yes.
Q. You knew, didn't you, that Mr. Oliver was there trying to learn from you what you knew about this matter, didn't you?
A. Yes.
Q. You knew that the strikers—that these deputies had been indicted, didn't you?
A. What do you mean indicted?
Q. You had been before the grand jury, hadn't you?
A. Yes, sir.
Q. And they had been arrested?
A. Yes, sir.
Q. And were charged with murder, you know that?
A. I didn't know what they were charged with, murder or—
Q. Well, you have been in jail and seen them in jail, haven't you?
A. Yes, sir.
Q. Before you signed this you had been in jail?
A. Yes, sir; before I signed it.
Q. So you seen them?
A. Yes.
Q. And where was Mr. Oliver and this notary?
A. Down at Williams & Clark office.
Q. After you had been in jail and after you had recognized the men here in jail, and after you had been before the Grand Jury, that is right, isn't it?
A. Yes.
Q. So you told them you identified eleven of

the deputies at the county jail. You told them that?

A. I told them I identified eleven deputies.

Q. You understood what identified meant there, didn't you?

A. I told them I picked out eleven deputies.

Q. But you said they were at the plant, but you didn't know they shot, didn't you?

A. I didn't.

Q. Didn't say that?

MR. McCARTER: I would like to have this marked for identification.

(Statement marked for identification, Exhibit No. 2, defendant.)

Q. When did you leave Williams & Clark—about a week after this, you say?

A. When did I leave what?

Q. Williams & Clark people?

A. I got put out of the office about a week or a week and a half after.

Q. I ask you when it was, about a week and a half after you signed this?

A. It was a couple of months after I signed that; I signed a paper for Oliver.

Q. About two months after signing the paper for Oliver?

A. Yes.

Q. You left Williams & Clark?

A. No.

Q. I understood you to say—

A. I don't understand what you are talking about. You are saying this—

THE COURT: Well, Edward, he wants to know how long after the fracas on the 19th of January

you left the employment of Williams & Clark, whether it was a week or a month, or what it was.

A. When I quit the job?

THE COURT: Yes.

A. Well, it was two days after Easter, that I quit the job.

MR. McCARTER: Two what?

A. Two days after Easter.

Q. Now was that the latter part of March or early part of, early in April?

A. I don't know when it was.

Q. You were at the factory still when Mr. Oliver went down there, weren't you, you were still working at the factory?

A. Yes, I was still working at the factory.

Q. How long after Mr. Oliver was down there did you leave the factory?

A. I don't know.

Q. A week?

A. More than a week.

Q. More than a week?

A. After Mr. Oliver was down there.

Q. Do you remember at the suggestion of the prosecutor—Mr. Florance who sits here—or somebody in his office—going into the jail where a number of deputies were? Do you remember that?

A. Remember what?

Q. Deputies?

A. I don't know what you are talking about.

Q. Did you go into the jail to see a lot of deputies?

A. To see them?

Q. Yes.

A. What do I want to see them for.

THE COURT: Answer the question. Did you go to the jail to see the deputies in there.

A. I don't know what he means by seeing them. Pick them out?

Q. Pick them out, if you will. Did you go pick them out?

A. I went over and picked them out.

Q. How many did you see there, 25 didn't you?

A. I didn't count them. There was a number of deputies there.

Q. There was a good many there; don't you know there was 25 there?

A. There was all kinds of prisoners, all kinds there. I didn't count them.

Q. Didn't you know there was 25 deputies there?

A. Didn't I know?

Q. Yes.

A. They must have been around there.

Q. How many did you identify and pick out. You picked out ten there, didn't you?

A. Ten or eleven.

Q. Is it eleven that you say in this paper, or is it ten?

A. Well, eleven.

Q. Now, I want you to realize this is a serious thing, and I want you to be careful in what you say; you picked out eleven, did you?

A. Yes, sir.

Q. Out of the bunch which you saw in the jail?

A. Yes.

Q. And the only thing that you are able to say about them is that they were on the ground; you didn't pick them out as having fired a shot, did you?

A. In the jail?

Q. Isn't that a fact; what I mean now is—I want you to listen—when you were in the jail you were able to pick out or identify eleven men, but you said distinctly you couldn't say you saw any of them shoot. You only know that the eleven of them were there the morning of the occurrence?

A. The ones I picked out I saw over there And whoever were out there where the shooting was going on, was shooting.

Q. Did you say when you identified these men in jail—

A. Say it in jail, I didn't.

Q. You couldn't say they shot; all you could say was that you identified eleven of them as having been there, having been in the factory?

A. I don't know what you mean.

Q. Didn't you say when you picked out the eleven men in jail, that the only thing you knew of these eleven, were they had worked around the factory before the occurrence took place and you became acquainted with them?

A. What? Them over there?

Q. Yes.

A. No, I didn't.

Q. Didn't; all right. How long had you—What duty did Mr. McLoughlin do around the factory?

A. What duty?

Q. Before this occurrence?

A. I don't know what you mean, what duty. Day duty or night duty or what post?

Q. Yes, what was he engaged in that you saw him doing, McLoughlin??

A. A regular deputy.

Q. What did he do in the factory?

A. What did he do? Guarded around there night time.

Q. How long had he been there?
A. I don't know.
Q. What?
A. How do I know how long he had been there?
Q. Didn't some of these so-called deputies cook?
A. Yes.
Q. Didn't some of them wait on the table?
A. Yes, sir.
Q. Didn't some of them do night duty?
A. Yes, sir.
Q. Didn't some of them do day duty?
A. Yes.
Q. What did McLoughlin do in that work?
A. Night duty.
Q. Night duty. Were you there at night?
A. I was not.
Q. And he was sleeping during the day when you were there?
A. Yes, I suppose he was.
Q. Did you see him in bed?
A. I didn't.
Q. When did you see Mr. McLoughlin before this occurrence?
A. I seen him Saturday afternoon.
Q. What?
A. I seen him Saturday afternoon. I seen him—
Q. Saturday afternoon before the occurrence?
A. I don't know whether it was before the occurrence.
Q. That is what I want to know. When did you see McLoughlin before this day?
A. I seen him down to the factory.
Q. What part of the factory?
A. In the office. He sent me up the road for something.

Q. What?

A. He was sending me up the road for something.

Q. McLaughlin was?

A. Yes.

Q. What did he send you for?

A. To send a telegram.

Q. To whom?

A. That wasn't my business to whom.

Q. What did Williams do there?

THE COURT: He is not one of these defendants, is he? Williams?

MR. McCARTER: Yes.

THE COURT: He is one of them.

Q. What did he do there?

A. He was on duty at the gate.

Q. Day time or night time?

A. Day time.

Q. You are quite clear about that, are you?

A. I am.

Q. Now what did Rick do?

A. Rick?

Q. Yes.

A. Who is he?

THE COURT: Let him stand up.

(Rick stands up.)

A. He was up at the office beat, too.

Q. What?

A. At the office beat.

Q. At the office beat?

A. Yes, sir.

Q. Guarding?

A. Yes.
Q. Day time or night?
A. Day time.
Q. What did Wallace do?
A. He was at the gate, too.
Q. Day time or night?
A. Day time.
Q. Did you discuss with Mr. Wescott—
A. I don't know what—
Q. (Continued)—on these two occasions of your ability to recognize these two men?
A. I don't know what you mean.
Q. Did you talk with Mr. Wescott about your being able to identify or recognize these men?
A. I don't know what you mean.
Q. Now, listen.
A. When or where?
Q. Did you—you talked to Mr. Wescott twice, didn't you?
A. Yes, sir.
Q. Where?
A. Where? Over in the prosecutor's office?
Q. When?
A. When? Last time, do you want to know?
Q. You know what when means, don't you, Edward?
A. I was talking to him twice.
Q. When?
A. When?
THE COURT: When was the first time and when was the second time?
A. The second time a week ago today.
Q. The second time was a week ago today?
A. Yes.
Q. Did you come up from Roosevelt for that purpose?
A. Harrington told me to come up to Brunswick with him that day, so I came up with him.

THE COURT: What is the purpose of this, you can't refute the right of the State, I suppose to talk with these witnesses. I don't want to interfere with any real defence you have got, but it does seem to me you are wasting a great deal of time cross-examining this witness about his interview with the prosecutor; we all know that the prosecutor would not be doing his duty if he didn't interview these witnesses.

MR. McCARTER: I take it if a man makes an inconsistent statement, it is our business to know it, whether he was either hypnotized or mesmerized.

THE COURT: Proceed.

MR. McCARTER: I have a right to find out unless the Court stops me, to pursue what I deem a legitimate cross examination. I think that it is very important for us to be able to see if this man has been cajoled by counsel for the State, and the Chief of Police of Roosevelt, to give a different statement from the statement he has given us. I think that is very material to these defendants.

THE COURT: Proceed.

Q. I ask if Harrington, the Chief of Police of Roosevelt, sent you up to Mr. Wescott a week ago, alone or whether he came with you?

A. He came with me.

Q. Who else?

A. That is all.

Q. When was it, before or after you saw the Attorney General? I mean Mr. Wescott?

A. When? I don't know how long ago it was.

Q. Who brought you up that time?

A. I came up with Harrington that time.

Q. This was at New Brunswick?

A. Yes.

Q. Did you talk about the same thing twice?

A. Yes.

Q. Was any reason given why you had to come a second time?

A. No.

Q. What?

A. There was no reason that I know.

Q. Did Mr. Harrington or Mr. Wescott tell you why, if they had already seen you and gone over the thing, they wanted to see you again?

A. No.

Q. Did you tell them the same thing twice?

A. Yes, I told them what I told youse.

Q. Who paid your expenses?

A. I did.

Q. Did you ask why, if you had been there once before and given them your recollection of this thing, it was necessary for you to come all the way from Roosevelt to New Brunswick a second time to see Mr. Wescott? Did you ask that?

A. I did not.

Q. How did you come, by trolley?

A. I did.

Q. Takes about an hour and a half, don't it?

A. An hour and a half? 38 or 40 minutes to come.

Q. Can't you remember how long it was before that time that you were here before?

A. I don't remember how long it was.

Q. All of those occasions were after you had seen Mr. Oliver, weren't they? So that all the occasions when you saw Mr. Wescott were after you had seen Mr. Oliver?

A. Yes.

Q. Did you see either Mr. Lanigan or Mr.

Voorhees between the times of your two visits to Mr. Wescott here?

A. See them?

Q. Did you get together with either one of them between those two times? You did, didn't you?

A. I did not.

Q. Not at all?

A. Not between those two times. I seen them when I come up to see Mr. Wescott, I seen them then.

Q. On both of the occasions?

A. Yes.

Q. But you did not see them between?

A. I don't know whether I seen them between or not. I never spoke to them between.

Q. Haven't you seen one or the other of them down at Roosevelt?

A. I seen them down there once in an automobile.

Q. How long ago was that?

A. I don't know.

Q. Was that before you had seen Mr. Wescott at all?

A. Before? It was after.

Q. After the first time?

A. Yes.

Q. Between the first and second trips to Wescott you saw these two other gentlemen down at—

A. I didn't see the two. I didn't say the two. I said the one.

Q. Which one?

A. The first lad.

Q. Mr. Lanigan. In an automobile at Roosevelt. Did he hunt you up?

A. He did not.

Q. Have a talk with you?

A. I seen him in the car there, and I went up —I was walking up the road and I met him, and that is all. I said hello, and that is all. I went along on my business.

Q. You didn't know he was coming?

A. He didn't come there to see me.

Q. I didn't ask you that. Did you know he was coming?

A. I did not.

Q. It is a fact, isn't it, Edward, that yesterday, just before the noon adjournment, when the prisoners were to be returned to the jail for their lunch, that Mr. Voorhees had you stand out there for the purpose of enabling you, if possible, to identify them as they went along?

A. Yesterday?

Q. Yes.

A. No, sir. Monday.

Q. The day before?

A. Yes.

Q. Where did you stand?

A. Stood out there.

Q. Where?

A. At that door.

Q. What did he tell you he wanted you to do that for?

A. What did he tell me?

Q. Yes. What did he tell you?

A. I don't know what he told me.

Q. They were all together going from the court house to the jail, weren't they?

A. I seen them coming up that stairs there. I didn't see them between the—

Q. Wasn't Mr. Voorhees with you at the time that you saw them going from the court house to the jail, or from the jail to the court house?

A. Yes.

Q. For the purpose of seeing if you could identify them, that is right, isn't it?
A. He didn't say nothing to me about identifying them or nothing.
Q. He did not?
A. I don't remember what he said to me.
Q. What was he with you for?
A. I don't know what he was with me for.
Q. How long had he been with you?
A. A couple of minutes.
Q. And didn't he point these men out to you?
A. He did not.
Q. He did not?
A. No, sir.
Q. And didn't he make an effort to point them out to you and say, there they are, look at them?
A. No, sir.
Q. Nothing of the kind?
A. No, sir.
Q. You will swear to that?
A. I will.
Q. Didn't say a word to you?
A. What do you mean, didn't say a word?
Q. As these men went by?
A. No, he didn't say, here they are, there they are, or there they go.
Q. Didn't say a word to you?
A. No.
Q. Didn't say a word to you?
A. No, sir. Well, he was talking to me. I don't know what he was talking about.
Q. Didn't say, here they come?
A. I didn't hear him say, here they come, or there they are.
Q. Didn't say a word about that? What did he say?
A. He said, come on around and have a look

at them. That is what he says. There you are.

Q. So you went around and had a look at them?

A. Yes, and I had a good look at them, too.

Q. And you had been trying to look at them before, hadn't you?

A. I had not. Do you think that I was trying to look at them?

Q. Do you mean to tell me that since this case has been going on you did not come in there before this one occasion you have just referred to, to look at these defendants?

A. To look at them?

Q. Yes. Do you mean to tell me that you did not make any effort than this one occasion when Mr. Voorhees said, here they are, here they are, look at them?

A. I did not. That is the only effort I—

Q. When was that?

A. Monday.

Q. That was the first day?

A. Yes.

Q. Do you recall being brought into this room by Mr. Voorhees?

A. We went through—

Q. One minute. For the purpose of looking at these defendants, after the witnesses had been excluded from the room? Do you remember that?

A. I remember going through here. We didn't come through to look at them.

Q. Mr. Voorhees came with you, didn't he?

A. Yes.

Q. Where had he joined you?

A. I don't know what you mean by joined me.

Q. Where did you meet Mr. Voorhees that time

that you came through this court room after you had been excluded?

A. I don't know what you mean.

Q. Do you remember going through the court room with Mr. Voorhees?

A. I do.

Q. Where did you meet Mr. Voorhees before that, at recess?

A. Met him out there.

Q. What did he say to you? Come through the court room?

A. No. He said, come on and take a walk.

Q. This was outside of the court house, was it?

A. It was over here.

Q. And where did you walk?

A. We come through here.

Q. You walked right over there on the corner?

A. We wasn't over on the corner. That was right there. I was watching them playing ball out there.

Q. He said, come and take a walk. Well, where did you walk?

A. We come through here.

Q. Through here?

A. Yes.

Q. And then where did you go?

A. I was out there.

Q. In the back room?

A. Before we come through here we walked up and down that sidewalk, and we come through here.

Q. Did he tell you that he wanted you to see the men in here?

A. When we come through here?

Q. No. Before you were walking up and down the sidewalk?

A. I don't know what he was talking about then.

Q. Did he tell you he wanted you to see the men?

A. Well—

Q. Did he tell you he wanted you to see the men?

A. He said, come on, we will take a look at them.

Q. Where was that? Out on the sidewalk?

A. Yes, when we was coming down.

Q. So then you turned around and came in through here?

A. Came in through here.

Q. Was that Monday or Tuesday?

A. That was Monday.

Q. That was Monday?

A. Yes.

Q. Was that after you had the other look at them?

A. The other look at them where?

Q. Anywhere, the one that you have already described?

MR. WESCOTT: It is the same one.

MR. McCARTER: Well, do you think that is correct, gentlemen, to testify for the witness.

Q. You have already told us that you had one look at them as they were coming from the court house to the jail.

A. I didn't tell you that at all. I told you that I was standing with him, I was standing out there, and they was coming up the stairs.

Q. Was that occasion before or after the time you went through here to get a look at them?

A. I don't know what you mean by through here.

Q. See if we can't make it plain. You remember standing outside and getting a look at the deputies, don't you?

A. Outside here?

Q. Yes.

A. Yes.

Q. You remember that?

A. Yes.

Q. Was that occasion—

A. It wasn't out in the yard. It was right here when they was coming up the stairs.

Q. Was that time before or after you came through the court room with Mr. Voorhees for the purpose of getting a look at them?

A. Well, we came through, and we went through the same way. We come in this way and we went out that way again.

Q. Well now, was that the time that you saw them outside?

A. When we seen them outside, coming in here, we stood out there a couple of minutes, and we come through here.

Q. Do I understand you then that you have made two efforts to look at these men?

A. I did not.

Q. Only one?

A. Only one.

Q. And you were in the room this morning when the deputies came in, weren't you?

A. I was not. I didn't see no deputy coming in this morning.

Q. Weren't you in this room this morning before court?

A. I was not. This is the first time I am in here.

Q. You were not in this room this morning before court?

A. No, I was not.

Q. Are you sure about that?

A. I wasn't in this court this morning only when I was called in now.

Q. Were you in the court room yesterday?

A. In here?

Q. In this court room?

A. I was out by the door waiting the lad until he got a drink of water, that is all.

Q. Were you in the court room yesterday?

A. No.

Q. In this room?

A. No, sir.

Q. Now, coming back to these men, these defendants, what work did Moran do?

A. Moran? Waiter.

Q. You recognize Mr. Moran, do you?

A. I do.

MR. WESCOTT: Will you stand up, Moran?

Q. He was a waiter, you say?

A. Yes, sir.

Q. What work did O'Mara do?

A. I don't remember O'Mara by name.

THE COURT: Let him stand up.

MR. WESCOTT: Mr. O'Mara.

Q. What did he do?

A. He was at the gate.

Q. How many men were at the gate?

A. Well, before you—

Q. How many men were at the gate?

A. To stand up and say his name, I don't believe that lad's name is O'Mara.

Q. One moment. How many men were at the gate? Answer the question, and then we will come back to O'Mara.

A. How many men were at the gate?

Q. Yes. You have given us two or three, but I want to know how many more were there?

A. How do I know how many more?

Q. How many men stood at the gate?

A. Well, there was—I think there was four. Each two took an hour.

Q. Two men at a time for an hour at the gate, is that right?

A. Yes.

MR. McCARTER: Stand up, O'Mara.

Q. Was he a gateman?

A. Yes.

Q. You are sure of that, are you?

A. Yes, sir.

By THE COURT:

Q. You said something about that not being his name.

A. I don't think that is his name.

By MR. McCARTER:

Q. What is it?

A. I don't know what it is.

Q. Who are you working for now, Edward?

A. Me? I am working on the grub wagon. A peddler wagon.

Q. In Roosevelt?

A. Yes, sir.

Q. Did you say you were kicked out of the office of Williams & Clark?

A. I didn't say I was kicked out. I was put out.

Q. Were you discharged?

A. I was discharged out of the office, yes.

Q. Didn't you voluntarily leave Williams & Clark's?

A. I left when they put me in the factory, yes.

Q. What?

A. They put me over in the bag room, and then I left there awhile.

Q. And then you left?

A. I left.

Q. Why did you say on your direct examination, and why did you say twice to me, that you were kicked out, or put out of Williams & Clark?

A. I said put out of the office.

Q. What?

A. I said I was put out of the office.

Q. That is what you meant to say?

A. Meant to say?

Q. You were not discharged, were you?

A. I was discharged out of the office, yes, but not from the factory.

Q. Do you remember a man in the cook house there during this trouble by the name of Tony Simone?

A. I do.

Q. Do you remember about 15 or 20 minutes, or a half an hour or so after the occurrence, after this row and trouble, going down in the cook house and asking Simone about the matter?

A. Who, me? I did not.

Q. You did not. And didn't you say to Simone on that occasion—ask him if he could give you any information about the deputies chasing the Hunkies away?

A. I did not.

Q. Said nothing of the kind?

A. I did not.

Q. And didn't you ask Tony Simone on this same occasion down in the cook room, how it happened, what had happened?

A. I did not.

Q. And whether he had seen the occurrence or knew about it, so that you could learn about it?

A. I did not.

Q. Nothing of the kind took place?

A. I never said nothing to him about that.

Q. What did you say to him?

A. I didn't say nothing to him.

Q. You went down there, didn't you?

A. I don't know whether I went down there or not.

Q. You said a little while ago that you remembered going down there to talk to him?

A. Who?

Q. Tony Simone.

A. I did not. You asked me if I knew a lad in the cook house by the name of Tony Simone, and I told you yes.

Q. You say you didn't go down to see him?

A. I told you I didn't know if I went down there or not.

Q. Will you deny you were there?

A. What?

Q. Will you deny you went down there within an hour after the occurrence or not?

A. I don't know whether I was or not.

MR. McCARTER: That is all.

RE-DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Did you go to the jail more than once to see these people?

A. Only went once to the jail.

Q. And did you go there because the Prosecutor wanted you to go, or somebody wanted you to go?

A. I don't know what you mean, wanted me to go. I was only over there once to pick them out, identify them, or whatever they call that.

Q. Who sent you there?

A. Who sent me there?

Q. Yes, to see these men?

A. To pick them out?

Q. Yes.

A. Well, I know I went in with Dick anyhow.

Q. You went in with whom?

A. Mr. Peltier.

Q. Did the Prosecutor, Mr. Florance, or his assistant, send you there with Dick?

A. Not that I know of.

Q. When you went there to pick these men out will you tell us how these men were situated, or how they were fixed, and what you had to do to pick them out? How did you pick them out? How many men were there? Tell us all about it?

A. Well, there was all—everybody that was in there was all together.

Q. Were there many people besides these defendants there, besides these men here?

A. Yes, there was all—I guess pretty near everybody who was locked up was there when I picked them out. All in there.

Q. All mixed up together?

A. All mixed up together.

Q. Who went in there with you when you did pick them out?

A. The lad over there. I don't know what he is.

Q. And you picked them out there when they were mixed up, did you?

A. Yes, sir.

MR. STRICKER: What lad does he allude to?

Q. Before you went in the jail to pick these men out, or before you—do you remember going before the grand jury?

A. Yes, sir.

Q. Was it the same day that you went to the jail?

A. No, sir.

Q. Was it the day before, or day after you went to the jail?

A. Day after, I think.

Q. Do you recollect whether or not you made a statement of what you knew about this matter to the Prosecutor?

MR. McCARTER: I object to it as immaterial.

Q. Before you went there?

THE COURT: Well, he can answer that yes or no. I will allow that.

Q. Did you or did you not?

A. When, that same day?

Q. Yes, either the same day or before?

A. I don't know what you mean.

Q. Well, do you remember whether or not you made a statement of what you knew to the Prosecutor, whether he took it down in writing, to Mr. Coan, and a stenographer? Do you remember a

stenographer, in the presence of Mr. Coan, taking down what you knew?

MR. McCARTER: Does your Honor think that that is worth while taking time? I do not see how it is material.

THE COURT: Answer it yes or no. Say yes or no.

A. Yes, I made a statement.

Q. Who is Mr. Oliver, whose name appears on this statement?

MR. STRICKER: It does not appear on there.

MR. WESCOTT: Well, Mr. Oliver is the name of the gentleman who was mentioned.

Q. Who is Mr. Oliver, do you know?

A. I don't know who he is.

Q. Do you know who Mr. Keller is?

A. Yes, sir.

Q. Who is he?

A. He is assistant superintendent.

Q. He is what?

A. Assistant superintendent down there.

Q. Of these works, Williams & Clark's?

A. Williams & Clark's.

Q. Was he with Oliver when they got this statement?

A. While I was giving the statement—

Q. Just explain what happened?

A. I was over in the bag room working, and Rosman come over and said, here is one of your friends from New Brunswick there. So I said all right. He said, put on your coat. I put on my sweater and I went over there.

Q. Who was the man that came after you and

told you one of your friends from New Brunswick was there?

A. Rosman.

Q. Who is Rosman?

A. Superintendent.

Q. Then what did you do?

A. I went over to the office and he started asking questions.

Q. Who asked a question?

A. Oliver.

Q. Was there a stenographer there?

A. Yes, sir.

Q. Was what you said taken down?

A. It was taken down in some kind of writing.

Q. How much did they question you? How long?

A. I couldn't exactly say how long.

Q. I know you can't say exactly. Did they talk to you a good bit?

A. Quite a good bit.

Q. About how many minutes?

A. I guess about a half an hour.

Q. And did you tell them all that you told here as far as you can recollect, before this jury?

A. Well, I didn't tell them all.

Q. Well, did you tell them a good bit?

A. Told them quite a good bit; yes, sir.

Q. And you were still in the employment of this company at the time this statement was taken, were you?

A. Yes, sir.

Q. Who read the statement to you after it was taken?

A. The lad was with Oliver.

Q. Who?

A. The lad was with Oliver. The stenographer, or whatever they call him.

Q. Do you know who wrote the statement?
A. Yes, sir.
Q. Who wrote it?
A. The fellow that was with Oliver.
Q. And what was the statement that was read to you? Can you recall any of it?
A. Well, I told him mostly what I told you—

MR. McCARTER: I object.

THE COURT: The question is, what did they read to you, if you recollect.

Q. You told them mostly what you have told today here, did you?

MR. McCARTER: I object. I move that be stricken out.

THE COURT: That is stricken out.
Q. Did you tell him or not mostly what you have stated here?

MR. McCARTER: I object.

THE COURT: Answer the question.
Q. (Question repeated by stenographer)? And what was the statement that was read to you? Can you recall any of it?

By THE COURT:

Q. Do you recall any of it, and if so, what?
A. I can't remember now. I told you mostly what I told youse just now.

MR. McCARTER: I move that be stricken out. That is not an answer.

THE COURT: No, I will not strike that out. The answer is responsive to the question. Now proceed.

By MR. WESCOTT:

Q. When Mr. Voorhees asked you to see these men, what did he say to you about the seriousness of the thing, if anything, and about your being careful, and to tell simply the truth, and nothing else, and if you would not swear so and so.

MR. McCARTER: I object.

THE COURT: Mr. Attorney General, how is that important?

MR. WESCOTT: Well, I do not suppose it is. I am quite willing to abandon it.

THE COURT: The mere question is whether he is not telling the truth here when he said he identified these men. How he got his information, the jury can pass on.

MR. WESCOTT: That is all.

RE-CROSS EXAMINATION:

By MR. McCARTER:

Q. Do you remember going before the grand jury, Edward?

Q. That was before you went into the jail, wasn't it?

THE COURT: Are you going over that again?

MR. McCARTER: I want to get the order of events clearly.

THE COURT: You have had that twice, Mr. McCarter. I trust that you will not impose on my patience. I am trying to be kind, but you proved that twice already. Proceed now as quickly as you can.

MR. McCARTER: If it is understood distinctly that—

THE COURT: Ask him the question, and let us get along with it.

Q. Did you visit the grand jury before you went to the jail to see these men?

A. I did.

Q. And testified before the grand jury? Gave testimony?

A. I did.

Q. And the next day, or the same day afterwards, you went into the jail to identify the men, is that right?

A. Well, the next day.

Q. Peltier that went with you is the Prosecutor's man, you call him Dick?

A. Yes.

Q. Prosecutor's detective?

A. I don't know that he is a Prosecutor's detective.

Q. Well, you knew he represented the—

A. I knew he was a detective.

Q. Were the men whom you saw in jail dressed as they are here today, or did they have on old clothes?

A. Old clothes. Some in their shirts.

MR. McCARTER: That is all.

WILLARD B. KELLER, a witness being produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Mr. Keller, where do you live?

A. At Roosevelt, Carteret district.

Q. What is your business?

A. Assistant superintendent of the Williams & Clark works.

Q. How long have you been assistant superintendent?

A. Something between four and five years.

Q. Were you assistant superintendent at the time this difficulty arose in January last?

A. Yes, sir.

Q. You had some deputies down at the works?

A. There were some at the works; yes, sir.

Q. When did you get them?

A. I don't know as I could say the exact date. Somewhere along about the 5th, I think.

Q. What?

A. About the 5th of January, I think they came there.

Q. 5th of January?

A. Yes, sir.

Q. You were there every day, were you?

A. Nearly every day; yes, sir.

Q. You saw them every day?

A. More or less of them; yes, sir.

Q. You were there on the 19th of January, were you?

A. Yes, sir.

Q. See the men?

A. I saw them as I went in that morning; yes, sir; some of them.

Q. Give me the names of these ten men who are here in front of you?

A. I couldn't give them to you.

Q. Why not?

A. Because I never had their names.

Q Didn't the company keep their names?

A. Possibly the timekeeper did, but I had nothing to do with that part of it.

Q. Well, look at them and tell us whether they were part of the deputies?

A. I see several that was there, but whether they were there that morning or not I couldn't tell you.

Q. I didn't ask you whether they were there that morning. Just look at the whole ten of them and tell me whether they are the deputies who were there at the works.

MR. STRICKER: I object.

THE COURT: I will overrule the objection.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Look at them carefully.

A. I see four there that I can recognize as being there.

Q. Which four?

A. I don't know. I couldn't tell you the names of them.

Q. Then get up and point them out.

A. There is one in this seat here, and one right behind him.

THE COURT: Stand up.

By THE COURT:

Q. Do you know their names?
A. No.

MR. McCARTER: Williams and Mullen.

MR. WESCOTT: Bavier and O'Mara.

By MR. WESCOTT:

Q. You know Smith?

MR. McCARTER: I object. That is not right.

A. I couldn't tell you the names of those men.

Q. Do you know Mr. Smith, the one sitting there?

MR. STRICKER: I object.

THE COURT: I will allow that.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. I couldn't pick out a man Smith there. That man was not there. He was not up at our factory.

MR. WESCOTT: Mr. Smith stand up.

Q. Do you recognize him?
A. No, sir.
Q. Never saw him at your works?
A. I don't say I never saw him, but I don't recognize him. He could have been there. I don't say he wasn't, but I don't recognize him.

Q. What were you to do, if anything, with these men?

A. Not anything.

Q. Were you to see that they did nothing except what was right?

MR. McCARTER: I object.

A. They weren't to go about the factory any place where they were not allowed.

MR. McCARTER: I object. I under stand this witness said he had nothing to do with them. He cannot be led as to what he had to do with them.

Q. (Repeated by stenographer)?

THE COURT: That question I will overrule.

Q. What were their duties?

A. To guard the plant.

Q. What?

A. To guard the plant.

Q. To do that exclusively?

MR. McCARTER: If he knows.

A. All I know about it.

Q. What did you say in answer to that?

A. That is all I know, they were there to guard the plant. I was told we had nothing to do with that. That is all I know about it.

Q. On the 19th of January did you hear any instructions given these deputies?

A. No, sir.

Q. Are you sure of that?

A. No, sir; I did not.

Q. Did you hear anybody telephoning concerning that?

A. There was some telephoning in the room

outside of where I was, but I didn't hear anything of it at all.

Q. Haven't you already testified under oath about that?

A. No, sir; not that I know of.

Q. Before the grand jury?

MR. McCARTER: I object. I do not think this witness can be interrogated as to what he testified before the grand jury.

THE COURT: I will overrule the question.

Q. Did these deputies have guns and revolvers?

A. I don't know as they had any. I don't know what they had in the line of guns and things.

Q. What?

A. The supposition was that they did have. I don't know.

MR. STRICKER: I move that be stricken out.

THE COURT: Testify only what you know.

A. Don't know anything about them in that line; no, sir.

Q. Did you see any guns or revolvers about the premises?

A. I did guns about the premises; yes, sir.

Q. Where were they kept?

MR. STRICKER: I object to that.

THE COURT: I will allow it.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Where were these guns kept?

A. Well, they were generally on top of a closet in the middle office.

Q. What closet?

A. Sort of a place we have putting our stationery in, a stationery closet.

Q. Where was the closet, what building?

A. In the office.

Q. Where were they kept during the strike?

A. Part of them were on there, and part of them were into a clothes closet in the same room.

Q. Was there ammunition there?

A. Ammunition, there was some before that in another room, but I don't know anything about it at that time.

Q. Where was the ammunition kept?

MR. STRICKER: I object to that.

THE COURT: I will allow it.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Where was the ammunition kept?

A. Well, it had been out into a wash room that we had in another part of the building.

Q. Were there any revolvers there at all?

A. No, sir.

Q. You did not see any revolvers?

A. I might probably during the whole time there, but not that day, as I know of.

Q. You might have what?

A. I might have seen a revolver there probably some time during the strike.

Q. Where were these revolvers that you saw during the strike?

A. Probably in the office there, and in the hands of the men, possibly.

Q. Who had them?

A. The deputies, if anyone. I know I didn't have any.

MR. McCARTER: Mr. Keller, please remember that you are not to guess. You are to know what you know, and if you don't know, say so, and that is all.

THE WITNESS: Yes, sir.

Q. Did you ever see any of the deputies have revolvers?

A. Yes, sir.

Q. Where were you on the 19th of January when this trouble occurred?

A. In the office.

Q. Did you see any deputies there?

A. When I went in the morning they were in the entry.

Q. How many of them?

A. I couldn't tell you. Possibly 12 or 15, or maybe 20.

Q. And where did you see them?

A. In the entry to the office.

Q. What time of the day was that?

A. Ten minutes to eight, about.

Q. Where were you at the time these deputies were in the entry to the office?

A. I passed through there and went into the middle office, the room I generally had my desk in.

Q. Where did the deputies go from that entry?

A. I do not know.

Q. Did you stay in the office during all this trouble?

A. Yes, sir.

Q. Did you hear anything at all?

A. I heard the shooting at the track; yes, sir.

Q. You did hear shooting?

A. Yes, sir.

Q. Where were the deputies then?

A. I suppose they were out there. I don't know.

MR. McCARTER: One moment.

THE COURT: Answer what you know.

Q. Did you see the deputies at the corner of the fence?

A. Yes, sir.

Q. How many of them were there that you saw at the corner of the fence?

A. I couldn't tell you. Probably 10 or 12. Possibly more.

Q. Where is the corner of the fence that you speak of?

A. It is possibly 100 feet from the office.

Q. From the office?

A. Possibly; yes, sir.

Q. Did you see where they went from the corner of the fence?

A. Didn't notice them; no, sir.

Q. Did you take your eyes off them from that point?

A. Yes, sir.

Q. Never saw them afterward?

A. I didn't see them particularly; no, sir.

Q. What did they have there at the corner of the fence?

A. I couldn't see them plain what they had.

Simply saw the shadow of them through the picket fence. You could not see them plain.

Q. They were all together there at the corner?

A. They seemed to be in a bunch; yes, sir.

Q. And you heard the shooting?

A. Yes, sir.

Q. How long after you saw them at the corner of the fence was it that you heard the shooting, about?

A. Well, it couldn't have been over a couple of minutes.

Q. And after the shooting did you see these men, these deputies?

A. Back at the corner of the fence there again; yes, sir.

Q. The same ones back at the corner of the fence?

A. I couldn't tell you whether they were or not.

Q. But they were deputies?

A. I think so; yes, sir.

Q. And did they stay at the corner of the fence?

A. For a little short time.

Q. And then where did they go?

A. I couldn't tell you on that. I don't remember really.

Q. Now tell us where they went?

A. Back, possibly, to the office there.

MR. McCARTER: Don't tell us that.

Q. Don't you know? Did you see any of them after they left the corner of the fence?

A. Yes, sir; I saw deputies around there.

Q. Where did you see them?

A. Around in the front of the office some times before.

Q. Did you see any guns after the deputies came back?

A. Yes, sir.

Q. Where did you see them?

A. In the corner of the room, setting up against the desk.

Q. Who put them there?

A. I don't know.

Q. Did you see them put there?

A. No, sir.

Q. Had they been in the corner before the deputies went out to the corner of the fence?

A. I wouldn't say positive. I don't know where they were before that.

Q. Did you see them ordinarily in the corner?

A. As a rule they set in the closet I spoke about heretofore.

Q. How soon after the deputies returned from the shooting, or at the corner of the fence was it that you saw these guns in the corner of the room?

A. I wouldn't want to say the time. It wasn't long.

Q. Is wasn't long?

A. No, sir.

Q. How many guns were there that you saw there?

A. I couldn't tell you. There might have been the whole of them. We generally had six there. There might have been the whole six. I wouldn't want to say.

Q. What became of them? What became of those guns?

A. They were taken and returned to the closet.

Q. Where are they now?

A. I don't know.

Q. Where were they when you last saw them?

MR. McCARTER: Does your Honor think that is material?

A. In the hands of—

MR. STRICKER: One moment.

THE COURT: Proceed.

MR. STRICKER: I object to that.

MR. WESCOTT: We propose to trace them.

THE COURT: Mr. Stricker, this desk is so high that if you will rise I can see you. It is not very courteous for counsel to sit in their chairs and just make an objection. If you have an objection to make, rise, and address the Court and I will hear it.

MR. McCARTER: I beg your Honor's pardon. I object to the question as immaterial and irrevelant. Where were the guns when he last saw them.

THE COURT: I do not see how it is material, the way I look at this case, it seems to me it is in a very narrow compass, much narrower than it is being tried. I will overrule the question.

MR. WESCOTT: Of course, the purpose of the State is to trace these guns, and produce them here in evidence.

THE COURT: How can that be material? You have proved by a great many witnesses that these men—some men went out and they all had guns, and some of them had revolvers, and there was a great fusillade of shooting. That could not have been done without some kind of guns. It is not very material where the guns came from, if these men had them.

MR. WESCOTT: Very well. Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. There were about 45 or 50 deputies about that plant that morning?

A. I believe so.

By THE COURT:

Q. Do you know it?

A. I didn't keep any record of them.

THE COURT: Then he does not know that.

By MR. STRICKER:

Q. Don't you know? Can't you estimate the number?

A. Well, I would say about forty. I don't know.

Q. Can you identify one particular deputy that fired a shot on that morning?

A. No, sir.

MR. WESCOTT: I object.

Q. You say you heard the shooting?

A. Yes, sir.

Q. And that shooting came from all directions, did it not?

A. It appeared to; yes, sir.

Q. You don't say that any one of these four men that you saw about the plant that day, or any other time, fired a single shot, do you?

A. No, sir; I do not.

MR. STRICKER: That is all.

RE-DIRECT EXAMINATION:

WILLARD B. KELLER—Re-Direct

By MR. WESCOTT:

Q. You say the shooting appeared to come from every direction?

A. When I saw it, it did. It seemed to be going all over.

Q. Did you see the firing?

A. Yes, sir.

Q. Where were you when you saw it?

A. In the office.

Q. Then you were looking toward the firing?

A. After the first fusillade.

Q. After the first fusillade, then you looked?

A. Yes, sir.

Q. And it seemed to come from every direction?

A. Yes, sir.

Q. And you saw firing from every direction?

A. Yes, sir.

Q. Did any of the deputies get hit?

A. Not that I know of.

MR. WESCOTT: That is all.

RE-CROSS EXAMINATION:

By MR. STRICKER:

Q. You saw firing though from the point where the strikers were?

A. Yes, sir.

MR. WESCOTT: Must have been poor shots.

MR. STRICKER: If they had all been good shots there would not have been ayone left.

JOHN J. DONOVAN, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Donovan, you are a member of the police force of the Borough of Roosevelt?

A. Yes, sir.

Q. And you were on January 19th last?

A. Yes, sir.

Q. Were you on duty that day?

A. Yes, sir.

Q. Where?

A. At Carteret and Chrome.

Q. Well, were you down in the vicinity of the Williams & Clark plant on that day?

A. Yes, sir.

Q. What time did you get down there?

A. I got down there about ten or twelve minutes after the shooting took place.

Q. Who was with you?

A. Officer Skelly.

Q. What did you do?

A. Well, we went up there in an automobile and we stopped down the road about half a block from there. We were going down the road, and then we seen the crowd coming up the track, and we went up to see where the crowd was coming from and we found out the shooting was after occurred. We went down the track and searched quite some of the men to find out if they had any weapons with them. We could find none.

Q. Did you search for anything else?

A. Yes. We went down there and searched

around and found a lot of empty shells down there, revolver shells.

Q. Where did you find those shells?

A. Right on the right hand side of the depot.

Q. Right hand side facing which way?

A. To the factory.

Q. How many shells were there about?

MR. STRICKER: We object.

THE COURT: On what ground?

MR. STRICKER: On the ground it is not material to this issue. If any shells were found they certainly would have to be brought home to the defendants in this case.

THE COURT: You cannot prove everything at once. I will allow the question.

Mr. Stricker prays exception.

THE COURT: You may take an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. (Repeated by stenographer.)

A. Forty.

Q. What kind were they, what calibre?

A. They was two loaded shells. One was a 38, and another was a 32. There was fifteen 38's, and twenty-three 32's.

Q. What did you do with those shells, officer?

A. I took them down to the Borough Hall and kept them until about three weeks ago, and then I turned them over to the Chief.

Q. Chief Harrington?

A. Yes, sir.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. How many men did you search that morning, Chief?

A. Well, I couldn't exactly tell you how many men I searched that morning.

Q. Five hundred, six or fifteen?

A. No. About 10 or 15 or 20.

Q. And there was three or four hundred men around there that morning, wasnt' there, when you got there?

A. There was quite a crowd. I couldn't tell how many was there.

Q. What gave you the inspiration to stop with searching 12 or 15 men?

A. Why, they come up around there and they says that they were after getting shot, and they said, here, see, we ain't got no weapons on us.

Q. You wanted to make an investigation for the purpose of demonstrating that these men who claimed to have been shot, had been so shot without any cause?

A. Not exactly. We have done it right straight along.

Q. Have you arrested many men down there during that strike?

MR. COAN: I object to that as immaterial.

THE COURT: How is that material?

MR. STRICKER: He says he has done so right along. I want to know under what circumstances, whether in this body—

THE COURT: I think it is very easy to understand what this witness is testifying to. He said he came there as an officer, a lot of men were shot

and wounded, and they claimed that they were not armed, and wanted to be searched and he searched them to find that out. That is a fact. What it is worth is an entirely different question.

Q. Well, your sympathies were with these men at once, weren't they?

MR. COAN: I object to that.

THE COURT: I will allow that. You mean the wounded men?

MR. STRICKER: Yes.

A. Why yes.

Q. And you were against these deputies in the first place?

A. What did I have to do with the deputies there?

Q. You were an officer of the law down there?

A. Yes, sir.

Q. And you knew that your police force couldn't cope with the mob about that time, didn't you?

THE COURT: How did he know that.

MR. STRICKER: I say he does know.

A. I don't know nothing about that.

Q. Don't you; well there was trouble about that time, wasn't there?

A. Not exactly.

Q. Hadn't one of the agricultural plants been stormed and forced in your presence?

MR. COAN: I object to that.

THE COURT: I overrule that.

MR. COAN: I don't see how this is cross examining this witness; he has not testified to any-

thing of that kind. He has simply testified in a very limited or restricted sense.

MR. STRICKER: I propose to show by this witness he is a member of this police force, and the very presence of these deputies made a partisan of him; that is formed a bias with him. I propose to show that this man with the police officials, did everything they could to discourage these deputies, and they were against the system, if you please.

THE COURT: Suppose that is so; does that justify these deputies, as you call them, shooting down men without cause or reason?

MR. STRICKER: No, sir; it doesn't. But doesn't he testify, this man, they stopped after searching twelve or fifteen out of three hundred men; and certainly it goes to show the credibility of this man's testimony, and that he is a partisan.

THE COURT: Ask him if he is a partisan.

MR. STRICKER: I can't be limited to that concrete question.

THE COURT: I will overrule your question. Take your exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Well, you have a feeling in this case, haven't you?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Do you want to see these men acquitted?

THE COURT: Don't answer that.

A. It is none of my business.

THE COURT: I overrule that question; it is highly improper.

Q. Do you know anybody who had a revolver there that day?

A. No, sir.

Q. Hadn't seen any?

A. No, sir.

Q. Anybody the day before?

A. Yes.

Q. Who?

A. I don't know what his name was.

Q. Was he a striker?

A. Yes.

Q. Where was he when you saw him?

A. In the place where Style Road crosses Woodbridge avenue.

Q. How far from either the Liebig or Williams & Clark plant was that?

A. It was about as near as I can judge, about 500 yards from Liebig's.

Q. You say he was a striker?

A. Yes.

Q. How do you know that?

A. Because I know the man was working down there.

Q. How do you know he was a striker?

A. What?

Q. How do you know he was a striker? How do you know he was on strike?

A. What?

Q. How do you know he was on strike?

A. I know he was there with the bunch, that is all.

Q. Did you see him there with the bunch more than once?

A. Yes, sir.

Q. What was he doing with that revolver when you saw him?

THE COURT: One moment. How is this material? The State don't appear to object, but I don't want to try all these issues. Apparently they are willing to try a half dozen cases here. How is it material what happened the day before when some other men had revolvers?

MR. STRICKER: Why, if your Honor please, we insist—we respectfully submit—that whatever happened there all, this time is material, and if we can show this place was in a state of disorder and confusion—

THE COURT: Put your question and I will rule on it.

Q. (Repeated by Stenographer).

THE COURT: That is the day before? Is that the question?

MR. STRICKER: Yes, sir.

THE COURT: I overrule it.

MR. STRICKER: I pray an exception to your Honor's ruling; in order to save time I might say that I would like to ask this witness some other questions bearing on this very particular subject.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

THE COURT: Put your questions and I will rule on them.

Q. The fact is there was confusion and disorder there?

MR. COAN: When?

Q. For two weeks prior to January 19th?

MR. COAN: I object to the question.

THE COURT: I will allow that.

A. Well, I used to walk up and down the road; I see no disorder there. They kept moving up and down the road, and back and forth.

Q. Were you present at the plant known as the Liebig plant on the day when about 150 strikers opened and got by you and another officer?

MR. COAN: I object.

THE COURT: I overrule that. That is on some other day, as I understand it, not on this day.

MR. STRICKER: Not on this particular day.

THE COURT: I will overrule it.

MR. STRICKER: We pray an exception to your Honor's ruling.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Do you know what the deputies were doing there?

A. I wasn't down near the factory to see.

Q. You are an officer of the law?

A. Yes, sir.

Q. And assistant chief?

A. Yes, sir.

Q. And you don't know and you can't tell what this large number of deputies were doing at that time?

THE COURT: When?

Q. On the 19th day of January or two or three weeks previous.

THE COURT: If you put in two or three weeks previous, I will overrule that.

MR. McCARTER: It seems to us that if it appears that on the day that the day in question was but a sequence in a series of events that had transpired by which manifestations of open disorder and riots were made by these same strikers against the plant of the American Agricultural Chemical Company, whether that plant be the Liebig or the Williams & Clark in juxtaposition at Roosevelt, is important to indicate the situation at that time that this particular fracas took place, and to indicate that the deputies who were there—at the suggestion of the sheriff, for the preservation of property and of life—were led to expect would occur. They can't be limited to the moment of the shot, if a crowd of rioters surrounded the factory for a week before the date of the occurrence, and they manifested by holding pistols and shooting men up, and breaking windows, that they proposed to create disorder. That is important upon the situation that existed on the day when the fracas occurred, and assuming that that is proper cross-examination, we feel that it is important to show that that state of affairs was there

and had been there two weeks, and this man knew it, and shut his eyes to it, and he comes here and testifies against these men, having searched a dozen out of five hundred and found no arms on them, and then he comes and says he finds forty or fifty shells. It seems to us that the bias of this witness who did the searching of these persons, gives another importance to it; it seems to us, for a much broader question than that; that the state of affairs for two weeks previous to this date is very important. You will recall that the learned prosecutor in opening this case, stated that there had been a strike there ever since the 4th day of January; that the strike had gotten so violent that the sheriff had been called in at the instance of the owners of the property for its protection under the law, and that the sheriff, as he expressed it, "Hired Jerry O'Brien's men for the purpose of preserving order." Now, if the state opened this way and stated this fact before the jury, can we not show what disorder preceded this strike occurrence at which this unfortunate result occurred, and it has seemed to us your Honor ought to remove from your mind the idea that seems to be there. I may be wrong that there is nothing important here, anterior to the moment, if you will, preceding the occurrence in question. It seems to me that it is proper to show a state of siege that the rioters or strikers were assembled there at the arrival of the train with clubs, with pistols and with bludgeons, and that they were there for the purpose of intimidating the men that were coming in, and that some of them went so far as to force an entrance into one or the other of these plats; that some of them went so far as to break windows; I think the condition of affairs which existed all the time right up to and including the

time in question, is a very important issue for this jury to determine, in determining the measure of guilt, if any, of these defendants if they are shown to be guilty of anything, and these things, I think, give a very much broader scope to the question that is now before the Court, and I have ventured to make these remarks, because it seems to me that if your Honor with reference to this was in error in entertaining the idea that what occurred the day before, or what occurred a week before—if you will—if this condition continued—is not important. It seems to us to be the very crux of the action.

THE COURT: I will adhere to my ruling. Proceed with the cross examination.

MR. STRICKER: I guess that is about all. We pray an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

RE-DIRECT EXAMINATION:

By MR. COAN:

Q. And this man you saw the day previous with a revolver, you stated on cross examination; what happened to him?

THE COURT: Is that the day before? I will allow the question, if you chose to put it. Proceed.

MR. COAN: Then I move to strike out the testimony as to the day before.

THE COURT: What do you say about that question, does it stand. Do you press it, or have you withdrawn it.

MR. COAN: Question withdrawn.

THE COURT: What is your motion?

MR. COAN: I move to strike out that question as to the day before and the man with the revolver.

THE COURT: There wasn't any objection offered by the State when it was made, and I refuse to strike it out.

JOHN J. DOWLING, a witness produced on behalf of the State, having been duly sworn according to law, upon oath saith:

DIRECT EXAMINATION:

By MR. STRYKER:

Q. Mr. Dowling, where do you live?
A. Borough of Roosevelt—Carteret.
Q. What is your business?
A. Police officer.
Q. Police officer?
A. Yes, sir.
Q. Where abouts?
A. I am stationed in Carteret.
Q. Do you remember the morning of January 19, 1915?
A. Yes, sir.
Q. Where were you shortly after eight o'clock on that morning?
A. I was at the Carteret station.
Q. Did you see anyone else there?
A. Yes. Lots of people around the street there.
Q. Whereabouts?
A. Around the station.
Q. Were you at the Carteret station?
A. Yes, sir.
Q. Were you near the Williams & Clark station at any time?
A. After the shooting, I was at the Williams & Clark—down there by—
Q. How far is Carteret station from Williams & Clark station?
A. I don't know. I think it is one thousand feet. I am not sure.
Q. And how long did you remain at that station that morning?

A. I stood there until they started to shoot down at the Williams & Clark.

Q. Could you see the office of the Williams & Clark factory from the place where you were standing at the corner of the station?

A. No, sir.

Q. Can you see the Williams & Clark station?

A. Yes, sir.

Q. What did you see as you stood there by the Carteret station?

A. Why I saw a gang of men, a gang of the strikers down along the track.

Q. What were they doing?

A. Lined along the track; they weren't doing anything until the train came in, I seen a crowd of deputies coming from the Williams & Clark plant towards the station there.

Q. Did you see how many there were in that crowd?

A. No, sir. I think there was about thirty.

MR. STRICKER: I move that be stricken out.

THE COURT: I refuse the motion.

MR. STRICKER: I pray an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,

Judge.

Q. What did you see happen then?

A. I seen when the men got about—the deputies I think got about thirty—may be forty feet away from the track where the men were, they opened fire.

Q. In which direction?

A. Well, the men are on this side, and the de-

puties were on this side, and they were shooting this way towards the men.

Q. By the men you mean who?

A. I mean the strikers.

Q. Did you see what they were shooting with?

A. Well, they had some guns and revolvers and there were some clubs.

Q. What happened after that?

A. I went in and telephoned the chief and I returned down the track and I seen men going through the meadow, some of their comrades picked them up and carted them up the track, and the deputies started back for the factory.

Q. How many shots did you see fired, or how many times did you see these deputies shoot?

A. I don't know how many shoots were fired; I think there was about one hundred; I don't know.

MR. STRICKER: If your Honor please, I move that be stricken out.

THE COURT: I will strike that out, that is a mere guess.

Q. How long did this shooting last. How long a space of time?

A. I should judge about eight minutes.

Q. After the deputies ran to the factory, what did you do?

A. Why, I went over towards them, talking to them, I went over there—Patterson seemed to be—

MR. STRICKER: We object to any conversation he had with anybody in the absence of these defendants.

THE COURT: Whether it is competent or not, will be determined on how the State connect it up.

You can't prove all at once. You may answer that question.

MR. STRICKER: I pray an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. I asked Patterson what the trouble was.

THE COURT: Who is Patterson?

A. I didn't know his name at that time. He was a big stout fellow with glasses. He seemed to be the boss there.

MR. STRICKER: One minute; we object and move that evidence be stricken out.

THE COURT: That evidence is not competent as it stands. I think the State will be justified in showing this man Patterson was with this crowd; that he was with this crowd and exercising any authority, that hasn't been shown yet.

MR. McCARTER: This gentleman was one thousand feet away.

MR. STRICKER: Two thousand.

MR. COAN: He was right with the others.

MR. McCARTER: He is trying to say what a man named Patterson said after all this was over.

THE COURT: In the presence of the others?

MR. McCARTER: No, sir. In the presence of no one of them.

THE COURT: If the men who did the shooting were there, it isn't competent.

MR. STRYKER: The question was what he did and the witness anticipated and answered a little ahead what I wanted him to state in reply to my question, what he did; never mind what he said; state what he did.

THE COURT: What did you do?

A. I went over to the crowd of deputies right near the Williams & Clark plant and Lafayette street.

Q. Who were there in this crowd?

A. I don't know none of them, and I know afterwards—

MR. McCARTER: No.

Q. From your own knowledge do you know who was there?

A. I know Patterson was there.

Q. Who was Patterson?

A. He is a big stout fellow with glasses, and he was pushing the rest of the men back when I was there.

Q. And do you recognize any of these men here (referring to the defendants)?

A. No.

Q. What did you say?

A. No, sir.

Q. What did you do after that, after you went over to Patterson—not what you said, but what did you do?

A. I stood there until the chief came down, and assistant chief.

Q. Then what did you do?

A. Then the chief told me to go up and see how bad some of the men were hurt.

Q. Did you look over the ground around the Williams & Clark station at that time?

A. That was after that.
Q. How long after?
A. Well, about ten minutes, I suppose.
Q. What did you find there, if anything?
A. Found 12—13 empty shells, from riot guns.
Q. What kind of shells?
A. Shot shells out of riot guns.
Q. What did you do with those shells?
A. Picked them up. I found I think, 38 shells out of a 32-38 rifle.
Q. What did you do with these?
A. Picked them up and took them down to the Borough Hall; the assistant chief took them down to the Borough Hall, Officer Donovan.
Q. What was done with them after that?
A. I don't know.

MR. STRICKER: Gentlemen, do you think that is fair to be conversing in the presence of that jury in a voice loud enough for me to hear over here?

MR. COAN: I didn't intend that.

MR. STRICKER: I know, but—

THE COURT: Proceed.

Q. Did you see any of these strikers after the shooting?
A. Yes, sir; I saw a number of them.
Q. Did you do anything?
A. I searched a number of them that morning.
Q. Whereabouts?
A. Before I went over on the track.
Q. Whereabouts on the track?
A. By the switch. There is a switch leads up to East Rahway.

Q. What time was that?

A. That was right when I went down after the shooting, the deputies were starting back to Williams & Clark.

Q. Immediately after the shooting?

A. Yes, sir.

Q. How many did you search?

Q. How many did you search?

A. I don't know; I should judge about 12, something like that.

Q. How did you come to search them? Why did you search them?

A. I wanted to see if they had anything with them.

Q. Did you find any fire arms on any of them?

A. Didn't find nothing on them.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Mr. Dowling, you testified before the Assembly Investigating Committee in this case down at Roosevelt?

A. Yes, sir.

Q. Your memory is good, isn't it?

A. I don't know, I suppose it is.

Q. At which you were one of those examined, and this examination was by Assemblyman Pilgrim, one of the investigators?

A. Yes, sir.

Q. "In your own words tell us just what you know about it and give us the circumstances, will you please?

A. "Why I was standing at the Carteret station looking down the tracks.

"Q. How far away was that from this point?

A. I don't know the distance.

"Q. Well, about?

A. Might be one thousand yards."

MR. STRYKER: We object to the reading of this testimony unless counsel incorporates the question of the testimony, as to whether or not he said that. We don't see any other ground upon which this testimony can be read.

THE COURT: I imagine he is going to ask him if he testified to that.

MR. STRICKER: (Continuing to read);

"Q. Well, about?

A. Might be one thousand yards and might be 2,000 feet."

Q. Did you testify to that?
A. I don't know.
Q. Did you testify to that?
A. I am not sure whether I did or not. I am not sure.
Q. Do you deny you testified to that?
A. No, sir.

THE COURT: No, he said he isn't sure.

Q. Now which is it, 2,000 feet, 1,000 yards or 1,000 feet?
A. I don't know.
Q. Have you measured the distance?
A. No, sir.
Q. You knew you were going to testify in this case?
A. Yes, sir.
Q. You knew that your examination, or rather your testimony before the Assembly Committee would be attacked, didn't you?
A. I did when I seen you.

MR. STRICKER: When you saw me, thank you.

Q. And you didn't take the trouble then since, to ascertain what the actual distance was.
A. No, sir.
Q. How often did you go over this ground?
A. How often?
Q. Yes.
A. I couldn't tell you.
Q. Three or four times a day?
A. No, sir.
Q. Once a day?
A. No, sir.
Q. Once a week?

A. I go down that far.

Q. How many times have you been over this ground since the date of that shooting?

A. I couldn't say.

Q. Well, was it a dozen?

A. I don't know as I have been over that ground since the day of the shooting any more than going down on business. Not on this case.

Q. You knew you were going to be a witness in this case, didn't you?

A. Yes, sir.

Q. And you knew or rather you anticipated, that you would be asked where you stood when this thing occurred?

A. Yes, and I answered it.

Q. And you didn't take the trouble to measure the distance?

A. No, I didn't think it was worth while.

Q. You didn't think it was worth while, and you can't tell us now whether that distance is 1,000 feet or 2,000 feet, or 1,000 yards, as you testified at the Assembly Investigation?

A. No, I guess you fellows measured it. You ought to know.

Q. You don't know?

A. No.

Q. Did you see that train come in that station that morning?

A. Yes, sir.

Q. You did not see any red flag on a post on the track, did you?

A. No, sir.

Q. You did not observe any obstructions on the railroad track, did you?

A. No, sir.

Q. You heard no shouting?

A. No, sir.

Q. And you saw none of the strikers with sticks or clubs around there that morning?

A. No, sir.

Q. Or pieces of railroad iron?

A. No, sir.

Q. And I take it from what you say everything was nice and quiet and peaceful there?

A. They were all scattered along the track.

Q. And they were all scattered along the track, and when the train came in, they were divided?

A. They were on both sides of the track, all the time.

Q. And I suppose when you heard the firing that came from all over?

A. No, sir.

Q. Didn't it?

A. No, sir.

Q. Where did it come from?

A. It came from the side the deputies were.

Q. That was on the other side of the train?

A. That was on the Williams & Clark side.

Q. The other side, divided by the train, wasn't it?

A. Yes, sir.

Q. Do you know what the so-called deputies fired?

A. Well, I seen revolvers and guns with them.

Q. How many revolvers did you see?

A. I wasn't near enough to count them.

Q. How many guns did you see?

A. I wasn't near enough to count them.

Q. How many deputies did you see?

A. I don't know just how many there were.

Q. Therefore you can't say whether there was six or ten revolvers, or whether there was twenty revolvers?

A. No, sir; I know there was more than six.

Q. Do you know there was more than six?

A. Yes, sir.

Q. And you don't know whether there was three guns, six guns or forty guns?

A. I know there wasn't forty guns.

Q. How many were there?

A. I couldn't say how many there was.

Q. Were there two?

A. I seen two after these men came back.

Q. You saw two guns?

A. Riot guns over by the fence.

Q. And six revolvers, is that right?

A. I didn't say six revolvers.

Q. Well, now, do you know one man that had a revolver?

A. I don't know their names.

Q. Can you describe one man who had a revolver?

A. I couldn't describe him.

Q. Directing your attention to the Assembly Investigating Committee where you testified, allow me to call your attention to this, please: By the way, how many deputies, do you estimate you saw?

A. I said about thirty.

Q. You said about thirty?

A. I don't know though, I didn't count them.

Q. Do you remember me asking this question: "Now of the thirty, how many revolvers—how many had revolvers—how many had rifles, and how many had riot guns?" Do you remember me asking you that question?

A. No, sir.

Q. Do you remember that question being asked you?

A. I don't know, I don't remember.

Q. You don't know whether it was asked or not.

THE COURT: He said he don't remember.

Q. Don't you remember having made this reply to this question: "Q. Now of the thirty how many had revolvers? How many had rifles and how many had riot guns?" To which you replied: "A. I couldn't say."

A. I might have said it, I couldn't say.

Q. You might have said that; was that testimony correct at that time?

A. I think it is correct on that. I couldn't tell how many had gotten revolvers.

Q. And your memory was better during—

THE COURT: How does this testimony at all differ from what he says now?

MR. STRICKER: Simply because he didn't say how many.

THE COURT: He said he saw a crowd and he said some had guns and some had revolvers and some had what they call riot guns. He just saw this crowd and don't know how many there were. He has stated that he didn't know how many had revolvers, he didn't know how many had guns; he said that before. And he stated there he can't tell, and he said today he can't tell.

MR. STRICKER: If I felt that the jury had this testimony in the manner in which your Honor states it—

THE COURT: You must assume that the jury have heard what this witness has testified to, and the jury will take that into consideration.

MR. STRICKER: I heard him testify six had

revolvers and two had shot guns. I am trying to show that at another time he said he didn't know anything about it.

THE COURT: Proceed. I think he said the same now.

Q. When you say a big crowd were at the station, would you say they amount to four or five hundred?

A. I don't know how many.

Q. It was a large number?

A. It was.

Q. And you saw shooting from the point where you were?

A. Yes, sir.

Q. You immediately concluded that the deputies had fired upon the strikers first?

A. I didn't conclude, I seen it.

Q. You seen it. Why did you search these strikers then?

A. Why?

Q. Yes.

A. Why I don't know for what reason, any more than I wanted to know if any of them had any guns, or anything else.

Q. Why, you didn't see any of them firing, did you?

A. No, sir.

Q. And you saw this thing just as clear as you see me?

A. Why, yes, sir.

Q. And you knew that the deputies were at fault from what you saw?

A. What I saw, yes, in my mind they were in fault.

Q. Beg pardon?

A. In my mind they were at fault; I don't know what authority they had.

Q. You were against the deputies from the start?

A. I was not.

Q. You aren't against them now?

A. What for. I am only telling what I know and what I see, that is all.

Q. You saw these deputies fire into the crowd of strikers?

A. Yes, sir.

Q. And you knew they were at fault from what you saw?

A. Yes, sir.

Q. And you didn't see the strikers fire at the deputies?

A. No, sir.

Q. Why did you search the strikers?

A. I told you before why I searched them.

Q. Tell me again.

A. I searched them to see if they had any guns or anything on them.

Q. Why, did you see a gun on any of them?

A. It isn't necessary to see a gun to have searched them for it.

Q. Did you suspect them of having guns?

A. Why no.

Q. Why did you search them?

A. Because I wanted to.

Q. Why did you want to?

A. That is the reason I wanted to search them, that is all.

Q. Is that the best answer you can give us?

A. That is the best answer.

Q. Why did you want to search twelve men?

A. Why did I want to search twelve men?

Q. Yes.

Q. I just simply went on searching as I went along down.

Q. Did Donovan help you?

A. No, sir; he didn't.

Q. Was he there?

A. After, he came right after me.

Q. And you can't tell why it was you stopped at twelve men?

A. I went down where I could go down the path to the Williams & Clark plant. I went right down that path.

Q. There were a number of men lying around there that were wounded?

A. No, sir.

Q. Weren't there?

A. Not right there.

Q. And at any point?

A. There was one man a couple of feet up the track, dropped by a railroad car.

Q. When you got down to the station and seen all this, where did you stop?

A. Where did I stop?

Q. Yes.

A. At the path going over to the Williams & Clark plant.

Q. Can yau indicate it on the map? Here is the station and here is the office (indicating)?

A. Here is the path that goes across; this switch goes up to East Rahway, I believe.

Q. That is correct.

A. And the path goes across this way to the Williams & Clark plant over this way; I came across somewheres over here, across here.

Q. Where was it you searched the men?

A. Right in here.

MR. McCARTER: Where is that?

MR. STRICKER: Just mark that with a pencil, will you please.

A. Right in here, right in the track here, right along the track here.

Q. Somewhere along there, is that right?

A. Yes, that is it.

Q. Take a look at it?

A. Yes, sir.

MR. McCARTER: What are you marking it?

MR. STRICKER: "Dowling." That will be all, Mr. Dowling.

(Whereupon, a recess was taken until 2 o'clock P. M.)

AFTERNOON SESSION, 2:00 P. M.

May 26th, 1915.

JOHN J. DOWLING, recalled.

FURTHER CROSS EXAMINATION:

By MR. STRICKER:

Q. Officer Dowling, just step down here a moment. Will you kindly indicate on that map where it was that you stood when you saw the trouble, when you say you saw it?

A. I don't believe it is on that map.

Q. Well, here is the railroad station?

A. Is that Carteret station?

Q. No. Williams & Clark's. And this is the track that leads to the Carteret station?

A. Yes, sir.

Q. Were you all the way at the Carteret station?

A. Right on the sidewalk, on the sidewalk here, I was on the far sidewalk.

Q. Isn't it a fact that between the Carteret station and Williams & Clark's plant that there are a lot of buildings along here?

A. There is on Railroad avenue. I don't believe Railroad avenue is on that map.

Q. Do you call this roadway Railroad avenue that parallels the track?

A. No. That is what we call Lafayette street.

Q. Aren't there buildings all along there?

A. Yes. But that is over on another street.

Q. Were there any buildings between Carteret station and this Williams & Clark station?

A. Railroad avenue comes in here (indicating); that is buildings here (indicating).

Q. Take your seat. So that those buildings were between the place where you say you saw the trouble and where you stood; is that correct?

A. Not where I saw the trouble, but you said the factory, didn't you; didn't I understand you right?

Q. Yes?

A. The trouble, the men hen I saw the shooting, went in here (indicating).

Q. In there?

A. Yes. The house is in here (indicating).

Q. Just mark where you say the houses are.

A. I can't mark. I am not a drawer of where the houses are. If you can tell me where the street is here I can tell where the houses are. There ain't no street here marked to show.

Q. Your claim is then that—

A. There is a street here runs down alongside of the railroad, this side of the railroad. There is houses along here (indicating); there.

Q. Right along here?

A. Right in back of these tracks.

Q. About here (indicating)?

A. Well, I just don't know whereabouts they are. There is a place where there is nothing here. There is Fee's saloon on the corner, and then comes Fee's house, and then comes Rock's house, and then next comes Neal Sheridan's house, and then comes Butler's house, and then comes Shapiro's bungalow, and two of Levinson's houses, right on that street.

Q. And all those houses that you mention are along that street?

A. Along that street.

Q. Along that street the houses are?

A. Yes, sir.

Q. The place where you saw the trouble was where?

A. Around here, right in here (indicating). Not so far over. I said over here (indicating).

Q. Over here?

A. Yes, somewhere around there.

Q. Around here. Is that right?

A. Between the two tracks. I said about here. Around there somewhere.

Q. Wherever Carteret station is?

A. Yes.

Q. All right. Do you know this gentleman here, Mr. Revolinsky?

A. Yes, I know him.

Q. Did you see him the next day?

A. I saw him that morning.

Q. Did you have a conversation with him?

A. That morning?

Q. Yes.

A. No.

Q. Did you have a conversation with him the next morning?

A. The next morning at Liebig's Lane I said something to him, I believe.

Q. And you were talking about the deputies, weren't you?

A. No, sir. I think I was talking about somebody else.

Q. You were talking about the Sheriff, aren't you?

A. I guess so. I said something about the Sheriff, I believe.

Q. And you said to him then that the Sheriff was a son-of-a-bitch?

A. I didn't say that.

MR. WESCOTT: I object to that.

A. I didn't say that word.

THE COURT: How is that competent?

MR. STRICKER: Simply shows this man's attitude towards these deputies, and the man who brought them there.

THE COURT: I will allow the answer to stand.

A. I didn't say that word.

Q. The men—as you stood in the Carteret station?

A. Yes.

Q. A crowd of men came by, did they not, the strikers?

A. At the Carteret station?

Q. Yes.

A. No, sir.

Q. Well, near the Carteret station?

A. No, sir. Away down. A little above this. Some men passed me there.

Q. Take your seat, please.

A. You wanted me to show you, didn't you?

Q. I will mark that with a square.

A. Somewheres along there.

Q. How many men passed you there?

A. Why, one man, there were three men, I guess, come up, and one fellow was shot, I think, in the left side somewhere right about here (indicating).

Q. No—

A. You are asking me a question and I am trying to answer you to the best of my ability.

Q. Pardon me, sir. Don't get excited.

A. It is enough to get anybody excited. I was down there and the court officers didn't come up and ask me to go out, they just threw me out of there, four of them. If they wanted me out they should have come up and asked me to come out like a gentleman. If they were big enough they wouldn't go out in the field.

Q. Before the shooting took place a large number of men passed you at Carteret station; is that correct?

A. Yes, sir.

Q. And they were all strikers; is that right?

A. I don't know whether they were all strikers or not.

Q. What do you say about it?

A. I know there was a lot of strikers passed me. There was different people in that bunch. I don't know whether they were strikers or not.

Q. And these strikers were coming from the direction of Liebig's?

A. They were coming up from what I call the Second Ward section.

Q. Is Liebig's in that section?

A. Liebig's is off towards the railroad cut.

Q. Didn't they pass by you?

A. Yes, sir.

Q. And they went down to Williams & Clark's station?

A. Yes, sir.

Q. You watched them, didn't you?

A. Yes, sir.

Q. And you didn't ask them where they were going?

A. I asked them where they were going.

Q. What did they tell you?

A. Said they were going down towards Williams & Clark's.

Q. Did they tell you what for?

A. No, sir.

Q. Did you ask them what for?

A. No, sir.

Q. Did you know what for?

A. No, sir.

Q. Did you think it was proper, as an officer of the peace in that community, to permit a large crowd of men to go by you to the Williams & Clark plant?

MR. WESCOTT: I object to that.

A. They didn't go to Williams & Clark's plant. They went down the track on private property. Railroad property.

Q. Do you think it was proper for you to permit a large number of men, known to you to be strikers, to go down towards this private property that you speak of, without making any effort to prevent them?

MR. WESCOTT: That is objected to.

THE COURT: How is that competent, Mr. Stricker?

MR. STRICKER: I want to show that this witness knew that here was a large aggregation of men—

THE COURT: Suppose he did? Suppose he did not do his duty? Suppose he ought to be indicted for not doing his duty?

MR. STRICKER: It simply shows his character, and the testimony that he gives.

THE COURT: I overrule the question, Mr. Stricker. Take an exception.

MR. STRICKER: We pray an exception. That is all.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MAX KRAWATZ, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. FLORANCE:

Q. Where did you live in January last, Mr. Krawatz?

A. In Carteret.

Q. What was your business at that time?

A. Butcher.

Q. Do you remember the morning of the 19th of January?

A. Yes, sir.

Q. Where were you about eight o'clock that morning?

A. At the depot.

Q. What depot?

A. Rahway avenue and Carteret.

Q. What did you notice particularly there that morning?

A. I seen a big crowd over there.

Q. Where?

A. At the track.

Q. At the Carteret station or at the Williams & Clark station?

A. It ain't far from one of the stations. It is about a big block, the old station, from Williams & Clark's.

Q. Where did you see the crowd?

A. I seen them going back to Williams & Clark's station.

Q. And what did you do?

A. I walked down with them.

Q. Walked down with the crowd?

A. Yes, sir.

Q. Then what happened?

A. Then I seen a train coming over there, the same line.

Q. Train from where?

A. I don't know from where, New York or Newark. I was waiting there for the same train, to go out of town.

Q. You were going to take the train, where to?

A. To leave Carteret. She don't stay there long in Carteret.

Q. You saw this train come into the station?

A. Come into the station.

Q. Where did it stop?

A. Stopped at Williams & Clark's.

Q. Right at the station or before it got there?

A. Right at the station, just near there.

Q. What did you see?

A. I seen—well, I walked down with the crowd there and I seen somebody, I don't know what they are, they come out of Williams & Clark's plant.

Q. Saw some men?

A. Some men.

Q. Where did you first see them come from Williams & Clark's?

A. While I was walking down with the crowd.

Q. What part of the factory did they come from?

A. From the office part.

Q. How many were there?

A. I couldn't tell you exactly.

Q. How many did you think there were?

A. About 20 or 25.

Q. How did they come?

A. They walked straight. They walked mixed up. I couldn't tell you how many there were.

Q. Did they have anything in their hands?
A. They had sticks.
Q. Anything else?
A. I didn't see nothing else.
Q. What else did you observe as they came out from Williams & Clark's? What else did you see?
A. I seen when the train stopped there, and after the train started to move they started to shoot at the crowd.
Q. Who started to shoot?
A. The people came out from Williams & Clark's.
Q. What else did you see after that?
A. After that I run away. I was with the crowd. I didn't know what was going to happen then and I walked away from them. I could get shot myself.
Q. Then where did you go?
A. I was waiting for the train when she went back. They put me in as a witness in that case, while I was over there, and I left town after that.
Q. Where did you go?
A. I went to Newark, and I come back the same day.
Q. What did you see after the men that came from Williams & Clark's shot, what was the effect of the shooting?
A. I seen one of them was killed, and a few of them were shot.
Q. Did you see anyone who was killed?
A. Yes, sir; I seen the first one was killed.
Q. Tell us what you saw?
A. I seen the first one, they carried him over, he was shot in his heart, and he had his hand on his heart and they were carrying him, about three or four men was carrying him, but I couldn't remember exactly how many, because I could not

look at it. He was shot in his heart, holding his hand on his heart, and the blood was flowing over his hand. He was dead already.

Q. Did you notice whether the crowd that you walked down with had anything in their hands?

A. No, sir; I didn't see anything.

Q. Notice any sticks?

A. No, sir.

Q. In the strikers' hands, or stones?

A. I didn't see nothing; no, sir.

MR. FLORANCE: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. See any ties on the track?

A. No, sir; I didn't see any.

Q. See a red flag stuck in the track?

A. No, sir. I seen a fellow with a red sweater on.

Q. Did you see a red sweater or a red cloth on a stick?

A. No, I didn't see. I seen he had a red sweater on him. The train stopped on account there was a crowd on the track.

Q. Where were you when you first saw these men coming from Williams & Clark's?

A. I was a little distance away from the Williams & Clark station.

Q. Towards Carteret?

A. To Carteret. I was walking down from Carteret station.

Q. And the shooting began after the train got in, is that right?

A. Yes, sir.

Q. How long was the train in before the shooting started?

A. I couldn't tell you the time. I didn't watch the time exactly.

Q. But it was in a little while, wasn't it?

A. Well, I don't know.

Q. Well, it was there two or three minutes before the shooting began?

A. The train started to go. It didn't stay long.

Q. I know, but it was after the train stopped that the shooting began?

A. No, the train started before the shooting began.

Q. The train stopped before the shooting began?

A. Yes, sir.

Q. And when it began, the shooting was all over?

A. When the train started to go, this time the shooting started in.

Q. It started in after the train went out?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. And when it did, then there was shooting all over, wasn't there? That is, firing in more than one place, wasn't it? Do you understand my question?

A. Yes, sir.

Q. I mean to say, the shooting was not all in one spot, was it, it was all around there, wasn't it?

A. It wasn't all around.

Q. Was it all in one spot?

A. The crowd was on this side of the track and the deputies came over from the other side.

Q. I know they came over from the other side. But the shooting was not all in one spot, was it? You know what spot means, don't you?

A. Yes, sir; in one place.

Q. One place, that is right. It was not all in one place, was it?

A. They wasn't shooting all in one place; no, sir.

Q. They were not?

A. I should say not.

Q. They were shooting all over, weren't they?

A. Shooting all over.

Q. Did you ever live in Perth Amboy?

A. Yes, sir.
Q. Do you know me?
A. Yes, sir.
Q. Had you ever spoken to me before yesterday?
A. Before yesterday?
Q. Yes.
A. Not before yesterday.
Q. You saw me in the rear of this court house yesterday, didn't you?
A. Yes, sir.
Q. And you came up to me and you spoke to me, didn't you?
A. Yes, sir.
Q. And you told me you had come down from Paterson?
A. Yes, sir.
Q. That you wanted to go back to Paterson?
A. Yes, sir.
Q. That you did not want to come here tomorrow?
A. Yes, sir.
Q. That is today. You told me that?
A. I would like to keep out of it.
Q. And you wanted to know whether I would help you to keep away from here today?
A. Yes. I would not like to be in no case.
Q. Because you did not want to be in the case?
A. Yes.
Q. Do you remember my saying to you, why, I didn't send for you?
A. No, sir.
Q. Did I tell you that?
A. You told me you ain't here to give me any advice.
Q. That is right. You have a better memory than I. Do you remember my asking you whether

you knew anything about this case? Do you remember my putting that question to you?

A. You asked me if I seen who done the shooting.

Q. Yes, I asked you do you know who did the shooting, or did you see who did the shooting?

A. I said I couldn't face him.

EDWARD ANDREWS, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Andrews, where do you live?
A. Carteret, New Jersey; 31 Lafayette street.
Q. Did you live there in January last?
A. January 19th.
Q. You lived in Roosevelt then, did you?
A. Yes, sir.
Q. Where were you employed?
A. Warner Chemical.
Q. Do you remember the morning of January 19th?
A. Yes, sir.
Q. Do you know where the Williams & Clark station is on the Sound Shore road?
A. Yes, sir.
Q. Were you down at that station on that morning?
A. Yes, sir.
Q. And who else was there?
A. Oh, there was a lot of them there. Two or three hundred strikers and other witnesses.
Q. Were you on strike?
A. No, sir.
Q. Where were you standing?
A. Well, I was standing about 150 feet away from the shooting.
Q. Well, with relation to the Williams & Clark station where were you standing?
A. Oh, about 50 feet or 75 feet.
Q. Which side of it?

A. Towards the Carteret Railroad station.

Q. Did you see a train come in there?

A. Yes, the train come in.

Q. What did you observe as the train came in?

A. Well, I stood there, and there was a few strikers went through the train to see if there were any strikebreakers there. So they didn't see any strikebreakers and they got off and went to their business.

Q. What happened then?

A. Well, then the strikers started to throw a couple of stones at the deputies, about two or three.

Q. Where were the deputies?

A. About two or three stones, and then they started to shoot.

Q. Where were the deputies?

A. Oh, they were about 35 or 50 feet away from the crossing.

Q. From what crossing?

A. Where they done the shooting, the railroad station, a little station.

Q. Crossing at the station?

A. Yes, sir.

Q. Where had the deputies come from?

A. From Williams & Clark's office. They were all out there.

Q. Did you see them come from the office?

A. Yes, sir.

Q. Where were they when you saw them first?

A. Well, they were coming out with their clubs swinging in their hands, coming from the office over to the railroad station.

Q. I mean at what point were they when you first saw them?

A. Well, they were just leaving the office when

we went down the tracks. That is why I went down there.

Q. How far away from the station were they when they fired?

A. Oh, about 75 feet.

Q. Where was the train at that time?

A. The train was just pulling in.

Q. And where were the people?

A. The people were all around the small station.

Q. Well, having reference to the train, where were the people?

A. Well, they were all coming down the track. A lot of people went down there and they were all coming together, coming down.

Q. On which side of the train were they?

A. They were coming down toward the Carteret station.

Q. In front of the train?

A. Yes, sir.

Q. How many shots were fired?

A. Hundreds of them, I think. Revolvers, shotguns.

Q. Who had the revolvers and shotguns?

A. Well, there was about 25 of them there.

Q. Well, who were they?

A. I don't know who they were. Deputies, they were, had the guns.

Q. Where had they come from?

A. From the office.

Q. Were you shot?

A. A small buckshot.

Q. Where?

A. Right under the heart.

Q. What did you do then?

A. Well, I ran as fast as my feet could carry

Q. Where did you run?

A. Towards the Carteret station.

Q. What did the other people who were around there do?

A. They ran through the water, some up the side track, and others all around, all ways.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Did you see any of the strikers with clubs there that morning?

A. Yes, sir.

Q. Pieces of iron?

A. I only seen one with an iron pipe, and one with a baseball bat, and one with a cane.

Q. Is that all you saw, just three?

A. About three of them.

Q. And how many hundred were there there?

A. Oh, with fellows and kids and everybody, must have been about three hundred, I guess.

Q. How many strikers were there?

A. About 250 or 200.

Q. And of the 250 you only saw one man with a cane, one with a piece of iron and one with a baseball bat?

A. Yes, sir.

Q. Do you know who the man was with the baseball bat?

A. No, I don't know him now.

Q. Do you know Julius Yeager?

A. No, sir.

Q. Did you see any ties on the track?

A. No, sir.

Q. Did you see the train stop above the station?

A. I seen the train stop.

Q. No. Before it got to the station?

A. Before it got to the station. The crowd was all in front of me.

Q. How do you know these men went aboard looking for strikebreakers?

A. Well, they jumped on the train and looked to see if any were there.

Q. Well, was that after the train got into the station, or before the train got into the station?

A. The train was coming in slow, and they jumped on.

Q. And while you were there there were no ties or other obstructions placed on the track?

A. Well, I didn't see that. The crowd was in front of me.

Q. The crowd was in front of you?

A. Yes.

Q. You did not see a pole stuck in the track with a red sweater or flag on it, did you?

A. No, sir.

Q. Did you see any of the strikers with pieces of slag or cinders?

A. Small stones.

Q. How many did you see with small stones?

A. Oh, there was a good lot of them. They threw at the deputies.

Q. Fifty or sixty of them?

A. No, not that many.

Q. Thirty?

A. Well, I only seen a few. About ten, I guess.

Q. Stones about as big as your fist?

A. Yes, sir.

Q. Some a little bigger?

A. A brick, half a brick.

Q. I understand that after they threw these bricks that is when the shooting began; is that correct?

A. Yes, sir.

MR. STRICKER: That will be all, thank you.

Harry Patterson called.

MR. McCARTER: While we are waiting for that man, if he is the man I assume he is, we say

to the court that he is one of the 25 men who have been indicted, and is incarcerated, and we think that he cannot be called to testify in this case unless a judgment of acquittal be rendered against him.

THE COURT: Why?

MR. McCARTER: We understand the doctrine of the State against Graham, in 41 New Jersey Law, so holds. I refer your Honor to the case.

THE COURT: I would like to see that case. I do not understand that is the rule.

MIKE CEREPAN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRYKER:

(Through Interpreter Stephen F. Somogyi.)

Q. Where do you live?
A. At Carteret.
Q. What is your business?
A. On the track.
Q. Where were you employed on January 19th last?
A. I was working on the track on that day, going to work in the morning.
Q. Were you near the Williams & Clark station on the morning of that day?
A. I was.
Q. About what time?
A. 8:08.
Q. Did you see the train come in?
A. I did not, because I was far away.
Q. Did you come there before or after the eight o'clock train came in from New York?
A. It stopped at Consumer's, that is the name of the factory.
Q. Do you know where the tool house is located along the railroad track near the Williams & Clark station?
A. I do.
Q. Were you in that place on the morning of January 19th, the morning they had the trouble around the Williams & Clark station?

A. I was in the morning, I was standing by the shed, outside.

Q. Were other people around there?

A. There were strikers, about 300 men or so.

Q. What were they doing?

A. They stopped the train so the scabs would not go there.

Q. What happened after the train stopped?

A. It stopped, the train went on slowly. They started to count with the deputies, and to quarrel with them, then the deputies started to shoot at the strikers.

Q. Where did the deputies come from?

A. They went from Williams & Clark's factory.

Q. Did you see them leave the Williams & Clark factory?

A. I did. I was standing by the shanty.

Q. What part of the factory did they come from?

A. From the office.

Q. And then where did they go?

A. They returned to the office.

Q. No. When they left the office where did they go?

A. When they were going to the train.

Q. Did they go to the train?

A. They went to the train.

Q. And then what did they do?

A. They were standing there and conversing with the strikers, one with the other.

Q. And then what happened?

A. They began to quarrel, and then they began to shoot, and then they began to run.

Q. Who began to shoot?

A. The ones who came out of the factory.

Q. And where did they shoot?

A. They shot everywheres. They shot into the depot, and one bullet passed by me and I ran away.

Q. Where did you run when you ran away?

A. I went to the other side of the tool house, the shanty.

Did you see any deputies after that?

MR. STRICKER: We object to the question in this form.

THE COURT: I overrule the objection.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

A. They went away and I went away myself.

Q. Did anyone else go in back of the tool house besides you. Were you alone back there, or did others go too?

A. A lot of people ran behind there. Not only I.

Q. Did anything happen back there?

A. Not in the back there, because they went away, the ones who did the shooting.

Q. Where were the deputies when they first did the shooting?

A. They were about 30 steps away from the depot.

Q. After they fired the first time, did they still stand or did they move to some other place?

A. They ran after the strikers. The strikers were running and they shot after them.

Q. Did the deputies stand still or did they move and follow the strikers?

A. I didn't see because I ran away myself. Could I see that?

Q. Could you see any strikers in back of the Williams & Clark station after the shooting?

A. I did see them, because one carried another one, took him on his shoulders.

Q. Did you see any deputies in back of the station?

MR. STRICKER: We object to that. This witness has testified that he ran away.

THE COURT: That goes to his credibility. I will allow the question.

A. I did not, because I was afraid, and I ran away.

MR. STRYKER: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. You said you saw a large crowd of strikers, three hundred, stop the train. Did you see some of them had clubs and stones?

A. They were all in front, and I was by the shanty.

Q. Did you notice any stones or clubs in their hands?

A. I did not see that.

Q. How near were you to them when the strikers commenced to quarrel with the deputies?

A. I was standing by the shanty and looking on.

Q. How near to the strikers?

A. About sixty feet from the depot.

Q. Where were the strikers?

A. At the depot, and further away from the depot, and everywhere.

Q. Did you see a red flag stopping the train?

A. I did not.

Q. Did you see an obstruction tie or log on the track?

A. There was an old log over there, that is even there now. It was full of water.

Q. Did you notice that old log across the track?

A. I did not see it, because I was not right among them.

Q. Did you see men climb on the engine?

A. They went on.

Q. Did you see men climb on the platform of the car?

A. Up into the train, yes, many of them went.

Q. To see about the strikebreakers?

A. Yes, to look for them.

MR. McCARTER: That is all.

Harry Patterson called.

MR. McCARTER: Does your Honor overrule my motion?

THE COURT: I want to know what the motion is.

MR. McCARTER: My motion is that if Harry Patterson, who is indicted, and not now under trial, be used as a witness by the State, that a verdict or a judgment of acquittal against the charge against him should be entered.

THE COURT: Why?

MR. McCARTER: For the reason, as I understand it, urged and stated in the case that I have referred your Honor to.

THE COURT: That case was an application to the Supreme Court to get the judgment of the Supreme Court, whether a man who had been indicted as an accessory to a murder, whether they should accept a less plea than murder in the first degree; that is, to take a plea of guilty of murder in the second degree, or some other lesser plea, because he has given evidence to the State. And the Supreme Court, Chief Justice Beasley, writing the opinion, said that would be quite a proper thing to do. There is nothing in the case at all which disqualifies the witness. That case only was an advisory opinion that when a man who was an accomplice gave evidence, that it would be quite proper either to excuse him entirely or to accept a plea of a lesser grade. There is nothing in the case at all that disqualifies the witness.

MR. McCARTER: Your Honor perhaps has escaped the point. I did not say he was not qualified. I say if they call him and use him they ought to acquit him.

THE COURT: The case does not hold it.

MR. McCARTER: I therefore ask we have an exception to your Honor's ruling.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

HARRY PATTERSON, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Mr. Patterson, look at that paper. Is that in your handwriting, part of it, the name?

A. Part of it.

Q. The names?

A. Part of the names are.

Q. Are all the names in your handwriting?

A. No, sir.

MR. McCARTER: I think the witness ought to be warned that he is not compelled to answer any questions that would tend to incriminate him. I think the witness ought to be warned that he is not compelled to make any answers that might tend to incriminate him. He is under indictment here.

THE COURT: Of course, you are not bound to answer any question that will incriminate you. You are under indictment, if you put it on that ground. Proceed.

Q. Do you know Mr. Voorhees, this gentleman sitting here (indicating)?

A. I do; yes, sir.

Q. Did you on the 19th of January last, at the works of Williams & Clark, give him that list, or that paper with that list of names on it?

A. I respectfully decline to answer the question on the ground that I am a defendant in this action, and I believe that whatever I may say here might be used against me, which would incriminate me.

Q. This will not be used against you to incriminate you.

MR. McCARTER: That will not do.

THE COURT: The witness has a right to take that position if he chooses.

MR. WESCOTT: His name is not on that paper and we are not going to get any evidence from this man that will even tend to incriminate him. That is not my purpose.

MR. McCARTER: I submit that is an improper remark.

THE COURT: Well, I have ruled.

MR. McCARTER: Yes, sir.

MR. WESCOTT: Stand up, Smith.

Q. Do you know this gentleman?
A. I do; yes, sir.
Q. Is his name on that list?

MR. McCARTER: I object.

THE COURT: I overrule the objection.

A. There is two names of Smith on this paper.
Q. Is this man's name on that list?
A. There are the names of two men by the name of Smith.
Q. Is this gentleman's name on that list?
A. What is his full name?
Q. John?
A. No, sir. His full name is not on this paper.
Q. Well, are his—is the initial of his first name on that paper?
A. The letter "J" is on here.
Q. And Smith?

A. Yes, sir.

Q. When you wrote that name there, did you mean this man?

MR. McCARTER: I object.

THE COURT: I have told you, Mr. Patterson, that you are not bound to answer any questions that would tend to incriminate you of the commission of any crime. Now, what you testify to, you must testify to voluntarily.

A. I decline to answer that question on advice of counsel.

Q. What counsel advised you not to answer that question?

A. I have several.

Q. Was this gentleman amongst the deputies on the 10th of January?

MR. McCARTER: Now, your Honor, this man is indicted with some 24 others, and every inquiry that is directed to him touching what transpired by any of those men who are his co-defendants, may tend to incriminate. We respectfully urge that this examination should not be pursued, that this defendant should be permitted to avail himself of the privilege.

THE COURT: I have told him so.

Q. Was Smith there?

MR. McCARTER: Same objection.

THE COURT: Testify to what you testify to voluntary.

A. I decline to answer.

Q. Do you deny to answer?

MR. McCARTER: The same objection.

A. Decline to answer.

MR. WESCOTT: That is all, cross examine.

MR. McCARTER: I am perfectly free to say that there be no misunderstanding about this, that after a subpoena was served on Mr. Patterson, a day or so ago, I advised him as his lawyer, and Mr. Stricker the same, that he was perfectly justified in taking that position, and we assume the responsibility.

THE COURT: He has apparently availed himself of it.

MR. WESCOTT: I want it clear he knows a refusal to answer a question, is a refusal to answer a question which will incriminate him.

THE COURT: I think, Mr. Attorney General, he is to be the judge, I can not.

MR. WESCOTT: I think the Court is the judge; however, I am not going to debate the matter any further.

THE COURT: This is a rather peculiar situation. This man was indicted along with the other men and it would be unfair to make him give testimony against himself. Is that all?

MR. WESCOTT: That is all.

THE COURT: Any cross examination?

MR. STRICKER: No, sir.

LOUIS MOKRI, a witness produced on behalf of the State, being duly sworn according to law, upon oath saith:

DIRECT EXAMINATION:

By MR. COAN:

(Through the Official Interpreter.)

Q. You live down at Chrome?

A. Yes, sir.

Q. And did last January?

A. Yes, sir.

Q. Do you know where the Williams & Clark station is?

A. Yes.

Q. Were you down there on the morning of January 19th last?

A. I was.

Q. Did you see a train come in there?

A. Yes.

Q. As the train came in, what took place?

A. When the train came in, these men were over there. I didn't have any work and I went in that direction to look for work.

Q. Where were you standing?

A. I was standing on the other side of the track, on the side towards the factory.

Q. How many other people were there?

A. There were many there, about 400 men.

Q. Was there any shooting there?

MR. STRICKER: I object, if your Honor please. I submit it is a leading question.

THE COURT: I will allow the question.

A. Yes.

Q. Where was the shooting?

A. The gentleman who came out of the factory?

Q. What factory did they come out of?

A. The one opposite the place where the train stops.

Q. Well, what is the name of that factory, do you know?

A. I don't know, because I never worked there.

Q. How many men came out of that factory?

A. About 25 or 30.

Q. Did they have anything with them?

A. Some of them had revolvers and some guns.

Q. Now what did they do after they came out?

A. When they came out they stood in line facing the people. One of them said, "Shoot them all," and then they began to shoot.

Q. Well, how many shots were fired?

A. They shot quite many. Of course after that I jumped into the water to my waist.

Q. Well, did anything happen to you?

A. Yes, I was about 150 steps away from them, in the water, when I was struck in the rear.

Q. Struck with what?

A. I don't know what it was, but it simply tore all my clothes off here (indicating the left side of the coat).

CROSS EXAMINATION:

By MR. STRICKER:

Q. You were not hit, were you, your body was not hit?

A. No.

Q. And there was considerable confusion and excitement there?

A. Down among them there I don't know; I was alone, and I wasn't among them.

Q. You weren't a striker, were you?

A. No.

Q. And you don't know what hit you either, do you?

A. I don't.

Q. And when you heard the shooting, you ran away?

A. I saw them shooting everybody and I jumped into the water and ran across it.

Q. How many men were shooting?

A. When I was facing them they were all shooting; I don't know how many after that.

Q. When you say all, how many do you mean?

A. Well, those that were there—many shots—because I saw many guns.

Q. See any revolvers?

A. Yes, I saw the man told them to shoot.

Q. He had a revolver and shot with it?

A. Yes.

Q. Do you know a man by the names of Yaeger?

THE INTERPRETER: I didn't give the entire answer.

MR. STRICKER: Did I interrupt you? Strike that out, please.

A. (Continued.) He had a gun on his shoulder and then he took that and began to shoot with it.

Q. One man had a gun, that is a rifle or a shot gun and a revolver?

A. Yes.

Q. And he shot the revolver in the air first?

A. Yes.

Q. He had the revolver in his pocket, I suppose?

A. Yes.

Q. And then he shot with a shot gun?

A. Yes.

Q. Do you know Julius Yaeger?

A. No—only to the time I came here.

Q. That is here in the court house, you mean?

A. Yes, sir.

Q. And he is sitting outside now?

A. Yes.

Q. You haven't talked to him about this case, have you?

A. No, never.

Q. Have you been talking with anybody out here about this case. Yes or no?

A. No.

Q. How long have you been in this country?

A. Eight years.

Q. Speak any English?

A. A little bit.

Q. Now how far were you away from the men that you saw do the shooting?

A. When I was in the water about 150 steps.

Q. Was that the first time you saw that?

(Witness continues to speak in his own language.)

MR. STRICKER: Well, now why do we have

to have a speech. I am asking him whether that was the first time he saw him, when he was in the water.

A. No.

Q. Where were you when you first saw these people shooting?

A. I was on the other side of the track.

Q. And how far away from the track were you?

A. About ten steps.

Q. And the train was in the station then, wasn't it?

A. Yes.

Q. And after—it was after the train got into the station and after some of the strikers got aboard of that train the shooting began?

A. Yes.

Q. And how long were you there before the train came in?

A. About two minutes.

Q. Did you see any tie or obstructions on the track?

A. I didn't see anything.

Q. Did you see any stick or pole stuck in the track, with a red sweater or cloth on it?

A. No, I didn't see it.

Q. Did you see any of the strikers with sticks or clubs, or stones?

A. I didn't.

Q. And did you see any of the strikers throw any stones?

A. I didn't see anything like that.

Q. All you saw was a number of men come from the Williams & Clark, come to the train and shoot?

A. Yes.

Q. And when the men got up to— They began

to shoot after the train was in the station, that is correct, isn't it?

A. Yes, the train was in at the station and they began to shoot in front of it, and the train went away and they shot in back of it.

Q. There wasn't any shooting under the train— While the train was in the station you couldn't see on the other side of the track, could you?

A. No.

Q. And there was nobody shooting under the train, was there?

A. No.

Q. How many men were there in this group that did the shooting?

A. About 25 or 30.

Q. And did they all have shot guns or rifles?

A. Yes.

Q. Every one of them?

A. Yes, not everybody. They were all together. I couldn't see very well.

Q. But those you saw with arms had rifles or shot guns?

A. Yes, guns or rifles.

Q. And how many of this group had guns or rifles?

A. I don't know.

Q. Well, five of them?

A. May be five or eight.

Q. Five or eight?

MR. STRICKER: That is all.

JULIUS JAEGER, a witness produced on behalf of the State, being duly sworn according to law, on oath saith:

DIRECT EXAMINATION:

By MR. WESCOTT:

Q. Where do you live?
A. Chrome, New Jersey.
Q. How long have you lived there?
A. Eighteen months.
Q. How long have you been in this country?
A. Thirteen years.
Q. Are you married?
A. Yes, sir.
Q. And have you a family?
A. Yes, sir.
Q. Yes?
A. Yes, sir.
Q. Where were you working on the 19th day of January?
A. I was working in the Liebig factory.
Q. Where is that?
A. Chrome.
Q. Were you down at the Williams & Clark factory on the 19th of January?
A. Yes, I was down there.
Q. About what time did you get there?
A. I was there about eight o'clock, or five minutes. 8:05 in the morning.
Q. And you went from what place to Williams & Clark?
A. I can show you on the map, if you want it.
Q. What?
A. I can show you right on the map if you want it.

Q. Go ahead and show us on the map?

A. (Witness indicates.) Right here, this corner here.

Q. That morning, where were you before you went down here to this factory, were you home?

A. Yes, I was home. I came just at that time.

Q. How do you go from your home down there?

A. I was coming from Carteret there.

Q. Yes?

A. Up here.

Q. Was there anybody with you when you went down there?

A. Nobody was with me but there was a whole lot of fellows there standing around.

Q. Where, where you have your pointer?

A. Right up on this side of the track. There were many fellows going up there.

Q. Can you give us any reliable estimate as to how many people there were there?

A. About 250 or 300, about that.

Q. What did that big crowd consist of?

A. You mean on which side?

Q. What?

A. What do you mean by that?

Q. Were they all strikers or were they other people there?

A. No, sir; this was strikers.

Q. Were there some other people there that weren't strikers?

A. I can't tell you whether it was or not.

Q. Now when you got down there what did you see? Just say without my asking you.

THE COURT: Come on the witness stand.

Q. Tell us in your own way now just what you saw; what happened down there.

A. Well, I was just from Carteret up to Wil-

liams & Clark, I seen many fellows on the track, when I went down Williams & Clark, and when I came down I seen the train there, and when I came at that place I showed you before—

Q. Let me interrupt you. Now, understanding what I have asked you. Did you see any obstruction on the track, any log or tie or anything?

A. I didn't see anything on the track at all.

Q. You couldn't see that?

A. No.

Q. With a red handkerchief or shirt or something to stop the train?

A. No, sir.

Q. Now, go on. You stood there and the train came and then what happened?

A. And then just when I came to the place where I showed you the train started to go, and then in the same moment I heard a fellow holler— before he hollered—they had a shot there. Somebody shot there from the deputies, and the other fellow says, "Shoot them all up." That is what I heard and then the same moment the fellow started to shoot, and the the strikers rushed across on that swamp there, there is a big swamp there, and they ran right through that, and many fellows fell right in that swamp in that water, and I wanted to run but I couldn't, I was stiff, I was stiff just like a piece of iron; I can't move myself.

Q. Why not?

A. I don't know why not, but I was standing there, I couldn't move myself, I was very scared.

Q. Were you frightened?

A. Yes, I was afraid ,sure; because the fellow was shooting all over there.

Q. Did you see where those shots came from?

A. Yes, I seen where the shots came from.

Q. Well, did they come from—

A. Before the train went out from the place they had a couple of shots under the car, under the train, and then when the train was out from the depot, by Jesus, the bullets was flying like rain, I tell you that.

Q. Let me understand that. Where was the train when there were shots under it?

A. Well the train—the end was about here, the front was up here about.

Q. Yes.

A. And the engine was about here. And the end was up here, and the deputy was in this corner. They came right out of the office here.

Q. Did you see them come out of the office?

A. Yes, sir; they were coming out right here, in that place, and they were staying right here.

Q. Yes?

A. And the strikers they ran up here, and I was staying right in this corner (indicating) here, see?

Q. Yes?

A. And when they started to shoot many fellows would fall in this ditch here in this water, and this part here; some fellow was laying right here and one fellow was kneeling right up here. He tried to run away at my side, and I see the moment he was falling in this swamp.

Q. Was he shot?

A. He was shot in the leg, can't run no more, and the other fellow he tried to run away too, but he couldn't because he was shot, and he was go behind the shanty, and here behind this shanty was about 12 men, and the deputies came around here that way, and I seen and they seen this bunch of fellows behind the shanty, and I started to shout like anything to that bunch, I hollered to

the men, to them, Don't shoot, Don't shoot, and they fired right at them.

Q. Was it one of the deputies fired at the group?

MR. STRICKER: I object.

A. Yes.

THE COURT: I will allow the question.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Was it one of the deputies who shot into the crowd?

A. Yes, sir.

Q. When you first saw these deputies come out of the factory—let me withdraw that question—where were you standing when you first saw them?

A. When the deputies try to come out from the office just in that moment I came on that place, and I seen the deputies come out from the office.

Q. They come out just as you got there?

A. Yes.

Q. And when they came out of the office, in what sort of a way did they come out?

A. Oh, well, they were walking not slowly and not quick, regular walk, you know, in front—

Q. All together?

A. No, walking—and when they came out about four on the first line and so forth, three, six, mixed up, and one had a revolver in his hand and guns.

Q. Each one had a revolver or a gun?

A. Yes.

MR. STRICKER: That isn't fair I submit, if your Honor please. He didn't say that.

A. (Repeated by the stenographer.)

Q. Do you mean he had a revolver in his right had and a gun in his left?

MR. STRICKER: We object to that if your Honor please.

THE COURT: I will allow the question.

Q. (Continued.) Or what? What do you mean by that?

A. I mean each man had a gun in his hand, some had a revolver and some had a gun. A couple of fellows had a club in his hand, a club.

Q. A couple of them?

A. Yes. One fellow was shot and he fell right to the track, and one deputy said, "Go on you son-of-a-bitch," and he catch him on the arm and hit him with the club. I was there, I was standing right there.

Q. Was that one of the deputies?

A. Yes, I was staying there, not far, about 25 feet. He pushed him in the swamp water there. That is exactly right.

MR. McCARTER: Answer the question. I think he ought to be instructed to answer the question.

THE COURT: Answer the question.

MR. WESCOTT: I think he made a perfectly satisfactory answer.

MR. McCARTER: I want this witness to answer the question.

Q. Where were these deputies standing when they first began to shoot, as near as you can locate

them, as near as you can tell, or where were they, which way they were standing or moving when they first began to shoot?

A. They were standing on the other side where the train was stopping; on the one side was the deputy and between was the train and on the other side the strikers. And deputies were about eight feet away from the cars.

Q. Yes, what happened to the train?

A. The train started to go just then when I came there, and when that happened with the train it was going to Chrome, and then the last car was moving from the station—from the place —and then it was going to happen.

Q. Then they began to shoot?

A. Yes, sir.

Q. You saw them shoot?

A. Certainly I seen fellows who were shooting.

Q. How did they hold their hands when they shot?

A They hold him just like that (indicating), just like I shoot you, like that.

Q. Were there many or few shots fired?

A. Oh, it was many. The shooting was about four or five minutes. They shoot all the time along that time; some fellow shoots his revolver once and after he filled it again.

Q. After the train went by did you hear any order given by anybody in command?

A. No, they stopped shooting. I saw a fellow that was laying in the swamp, and I was crying there, and when they stopped with shooting, I was saw here laying one fellow on the other side, a couple over on this side; I turned around and I kicked first fellow, and that moment deputies turned their backs and then went nicely back again in his office.

MR. McCARTER: I move that answer be stricken out. It does not answer the question.

THE COURT: Strike out that answer.

Q. (Repeated by the stenographer.)

A. I didn't hear no order afterwards.

Q. Did you hear anybody amongst those deputies say anything before the shooting began?

A. I didn't hear nothing before they started shooting. Just only once, I told you before, "Shoot all them up." That was first I was hurt.

Q. What was that?

A. Shoot them all up. That was the first.

Q. That is just what I want to know, when was that?

A. That was on the other side; this side of the train, comes in this place here. I was on the other side here and they started shooting.

THE COURT: He has told that two or three times.

THE WITNESS: Excuse me.

Q. After the shooting was done you began to tell me about seeing some people in the shop; tell us about that; about people lying there; tell us about that again?

A. I can't understand you right.

Q. Did you see anybody lying on the ground there?

A. Yes, I did.

Q. Tell us about it?

A. I saw about six fellows was lying right there besides me.

Q. Yes. And—

A. And when they stopped with shooting, then I picked up one on my back and I tried to carry him up, and he was too heavy and I give him to another fellow, and I said, "Carry that fellow to

the station here.'' So long as come an ambulance, and I went after that and tried to pick up the other ones who were laying in the swamp there, they had about eight or ten.

MR. McCARTER: Do you think that is an answer to that question. Isn't there any way of controlling this witness.

THE COURT: The question was, as I understood it what he saw, and he is telling what he saw.

Q. Do you know who the man was you picked up and tried to carry?

A. Yes, sir.

Q. Who is he?

A. John Garway. He is old man about 54 or something like that.

Q. Look at these ten men sitting here, can you identify any of those men, recognize any of them that you saw there that day shooting?

A. I seen that fellow there at that corner at the table.

Q. This one (indicating)?

A. I seen that fellow.

Q. Did you see any of the rest of those men?

MR. WESCOTT: Smith, stand up.

MR. STRICKER: I object to that, if your Honor please.

THE COURT: Just ask him if he can identify anybody. Did you see any one there you saw that day?

MR. WESCOTT: I ask Mr. Smith to stand up, unless your Honor directs him not to.

THE COURT: I think he ought not to stand up.

See if this witness can identify anybody, or if he can not.

Q. You can leave your place and come down here and look at this man?

MR. STRICKER: Kindly don't point at anybody.

A. Here is another fellow here on this side (indicating).

Q. Did you see any of the rest of them?

A. I will tell you something that time.

MR. McCARTER: I respectfully ask this witness be requested to answer the questions alone.

Q. Are you able to recognize any of the rest of them?

A. No.

THE COURT: Well, sit down. Just answer the question. That is all you have to do.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Yaeger, you stopped that train that morning, didn't you?

A. No, sir.

Q. Didn't you go to the conductor of the train before it came to a stop, and ask him whether there was any scabs on it?

A. Yes, I did, but the train was stopping at that time.

Q. Just answer my question Yaeger. You and I will get along very nicely. And didn't you go up the track and wave to the engineer to go slow?

A. Yes.

Q. And didn't you like a good American, say to the engineer, "Stop, because there are ties on the track?"

A. Yes, I did.

Q. Do you know who placed those ties on the track?

A. I couldn't tell you that because I came in that moment.

Q. Just answer the question. You can't tell me that, can you?

A. No, sir.

Q. You were one of the strikers, weren't you?

A. Yes, sir, I was a striker.

Q. And you were one of the strike leaders, weren't you?

A. What do you mean, one of them?

Q. One of the head men of the strike?

A. Yes.

Q. That is true. And you were directing the strikers what to do, weren't you?

A. What they do?

Q. You were telling them what to do and how to do it?

A. Never.

Q. Never?

A. I never tell anything to the people what to do.

Q. You attend all the meetings, don't you?

A. No, sir.

Q. No.

A. No, sir.

Q. You attended the meeting the night before on the 19th, didn't you?

MR. COAN: I object.

A. I was watching—

THE COURT: Just answer the question yes or no. I have told you two or three times to answer the questions and not to make speeches.

Q. You were at a meeting on the night before of the strikers?

A. Yes, sir.

Q. Do you know a man named Frescini, he was there?

A. Yes, sir.

Q. And he made a speech to the Italian strikers, didn't he?

MR. COAN: I object.

Q. Yes or no.

THE COURT: I will allow that.

A. He was not there.

Q. You were at Liebig's that morning, weren't you? At seven o'clock when the first train came in?

A. Yes.

Q. And there was a gang of strikers there, wasn't there?

A. Yes.

Q. And the train was held up there too, wasn't it?

A. Yes, it was.

Q. By putting ties on the tracks, that is right, isn't it?

A. There were ties on the tracks.

Q. Yes. And then the strikers got on the train, or were about to get on the train, and when they found out there was no scabs or strikebreakers, the train went on.

A. Yes, sir.

Q. Then these strikers started for Williams & Clark?

A. I don't know—

Q. Did you?

A. No, sir.

Q. Didn't you send to get Frescini before you went to Williams & Clark?

A. When I first—

Q. When you left Liebig's factory, didn't you start for Van Ness Place?

A. Yes.

Q. For Frescini, where Frescini was stopping, for the purpose of bringing him, that is Frescini, down to Williams & Clark?

A. Yes.

Q. That is true. And wasn't the reason why you went after Frescini in order to get him to come there and stop the strikers from making trouble?

A. Yes.

Q. That is true?

A. What kind of trouble do you mean?

THE COURT: Answer the question, will you?

Q. Do you remember testifying down at Roosevelt before the Assembly Investigating Committee?

A. Yes, sir.

Q. Listen to this: "That Italian fellow, what do you call him, Frescini, and I went for him, and I tried to tell him what is the matter here, that he should come up to have the people not make trouble here and try to keep the people quiet and look out for the people. I then went to Van Ness Hall and got Frescini with me, and we went together down to Carteret because all the fellows were going down Carteret way, and we got to Carteret station, and then came the second train in it." Did you say that?

A. Exactly right.

Q. What was the trouble you expected there that morning?

A. We had another day, another morning we had seen the people.

By THE COURT:

Q. Just answer the question. You understand English, don't you?

A. Yes.

Q. He asked you what was the trouble you expected that morning. Just answer the question, what trouble did you expect that morning?

By MR. STRICKER:

Q. Will you kindly answer that last question?

A. No, I can't tell you that. Have you somebody here to speak Hungarian?

Q. You were on the stand before the Assembly Investigating Committee about two hours at Roosevelt, a couple of months ago?

A. Do you mean we recognized the people there?

Q. You were asked questions and you gave answers—you gave evidence before the Assembly Investigating Committee?

A. Yes, sir.

Q. And the five Committeemen—and the five asked you questions?

A. Yes.

Q. In English?

A. Yes, sir.

Q. And I asked you lots of questions in English?

A. Yes, sir.

Q. And you spoke without an interpreter?

A. Yes.

Q. Now what trouble were you expecting upon the arrival of that 8:06 train that prompted you to go and get Frescini in order to keep the people down? Keep them quiet?

A. I don't expect no trouble at all.

Q. Is Mr. Partos in court. Stand up.

(Man in the audience stands up.)

Q. Do you know that man?

A. Yes, I know him.

Q. How long have you known him?

A. That fellow was here about five weeks.

Q. Five weeks?

A. I guess.

Q. Seen him nearly every day?

A. I seen him a week about twice.

Q. About twice a week you have spoken with him, haven't you?

A. Yes, sir; I spoke with him.

Q. Didn't you tell him at Roosevelt on the 21st of April, that nobody knew who put the ties across the railroad, as it was done in the night. Did you tell him that? Yes or no.

A. I don't know nothing about the tie.

Q. Did you or did you not tell that to the man who has just stood up, Partos, on the 21st day of April at Roosevelt.

THE COURT: Answer.

A. I didn't tell him anything at all.

THE COURT: What?

A. I didn't tell him anything at all, to that fellow about the tie.

THE COURT: Well, then say so.

Q. And didn't you tell him at the same time that if the shooting had not taken place on the 19th, that the strikers had planned to place a bomb in the building where the deputies were housed, that is where they were sleeping?

A. No.

Q. Yes or no?

A. No.

Q. And didn't you tell him that the plan was to put the bomb or place the bomb, on the 20th or 21st of January, but that the happening on the 19th of January kind of quieted it. Did you tell him that?

A. I don't tell anything at all to him.

Q. You spoke to him the 19th of April?

A. I spoke to him in the 19th of April?

Q. Yes, or on the 21st of April you spoke to him, didn't you?

A. I seen him every week once or twice, but I never spoke such a thing.

Q. You never spoke such a thing. All right. And did you tell him that this could have easily been done as the buildings were close to the fence and that you or the strikers or both of you would be successful in overpowering the guards that

might be there, that you could overpower the deputies or watchman? Yes or no.

A. No.

Q. Didn't you tell Partos, the same man on the 6th day of May at Roosevelt, that you were the life of the strike? That is, you were one of the leaders, you were the life of it. Did you tell that?

MR. COAN: I object to that question as immaterial.

THE COURT: I will allow it.

A. I didn't speak anything at all there.

Q. And didn't you tell him that on the morning of the 19th, after you had directed the men to go from Liebig's to the Williams & Clark plant, two of them had lost their nerve, had lost their courage, and that you clubbed them back into line?

A. No.

Q. And didn't you tell him that you went to a police officer and asked for the loan of a revolver on the morning of January 19th, with which you intended to shoot the deputies, but that the policeman told you that it was no use, as they had all run away?

A. I don't know nothing about that.

Q. Did you say that to Partos?

A. I didn't say anything to Partos before that.

Q. You have been speaking with him twice a week, haven't you?

A. Oh, yes, me speak to him. Me don't speak anything for that. Me speak for the Union, and so for the fellows.

Q. But you never spoke about the strike?

A. No.

Q. You never spoke about the deputies, did you?

A. He asked me some how was, and so I tell a couple of words, but not such a thing what you ask me this time.

Q. And you didn't speak about this trial, you didn't tell him you were coming up to testify, did you?

A. No, I don't speak anything for that.

Q. Do you know a man by the name of Dancsus?

A. Andy Dancsus? Yes.

Q. Wasn't he there at the same time you were talking to this man? Did you ever speak to him when Gancsus was around? Yes or no?

A. No. I don't know him, if he was there or not.

Q. What was it that man said before the shooting began?

A. Which fellow do you mean?

Q. Well, any fellow? Before the shooting began somebody said something on the other side of the train.

A. "Shoot all up." That is what I heard.

Q. And was that man on the train that said that?

A. No. He was not on the train.

Q. What?

A. He was on the other side of the track.

Q. Did you see him?

A. Yes, sir; I seen him.

Q. Through the car?

A. No. Between the cars.

Q. He was between the cars?

A. Yes.

Q. How far from the cars was he?

A. He was that time about 14 feet from me away.

Q. What were you doing at that time?

A. Just I was running down and tried to see what is the matter there.

Q. In that one spot?

A. Yes.

Q. And you stayed in that one spot?

A. Yes.

Q. And you did not move from that spot?

A. No.

Q. Now, Mr. Yeager, there were about four or five hundred of these strikers there, weren't there?

A. I don't know how many.

Q. Well, three hundred?

A. Something like that.

Q. And some of them were pretty mad, weren't they?

A. I don't know one mad or not.

Q. Were you mad?

A. Well, I was not mad at all.

Q. You were just as nice and calm and quiet as you are now, I suppose?

A. Yes.

Q. And every other man was the same, is that right?

A. I don't know how the other one was.

Q. Well, how did they look?

A. Well, just like a man in the strike, you know.

Q. Well, would they look as quiet as these gentlemen in this box (indicating jury)?

A. Well, those fellows they don't have such a trouble as these.

Q. Did they look as quiet as the crowd out here or were they making a lot of noise, the strikers?

A. They was not making a noise.

Q. Then they were nice and quiet, weren't they?

A. Yes.

Q. They were not making any more noise than I am making now?

A. You are making more noise.

Q. And there was none of them had sticks or clubs?

A. No.

Q. None of them had stones?

A. None, no.

Q. None of them had pieces of slag?

A. No.

Q. None of them had pieces of cinders or pieces of iron?

A. No.

Q. Not a one?

A. I don't see any.

Q. Nobody jumped on the cars to see whether any scabs had arrived, did they?

A. I didn't see it.

Q. How long were you there?

A. I was only about two minutes before they start to shoot.

Q. Was the train in, or did it just get in?

A. That train was right in.

Q. How long had the train been in?

A. About a minute.

Q. When the train came in there were a lot of strikers right on the track, weren't there?

A. Yes.

Q. And when the locomotive came in it went through the crowd, didn't it?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. How much of a crowd was there on the track?

A. I told you about 200 or 300 there was, I say before.

Q. So that if the locomotive of the train came in and divided the crowd, there was about 150 on one side and 150 on the other, is that correct?

A. No, sir; that is not right.

Q. That is not right?

A. No.

Q. How many men were there on each side of the track?

A. Fellows were on this side here, East Rahway side. Nobody was on the other side.

Q. That is what you say, but when the train came in?

A. Yes.

Q. You have just testified there was a large crowd on the track, and that the locomotive had divided them, that is, went through them?

A. They was going on this side here.

Q. Didn't you say a few minutes ago that when the train came in there was a large crowd on the track and that the locomotive divided them, that is, went through them; didn't you say that?

A. Fellows was all going on that side.

Q. Answer the question. Didn't you testify to that two minutes ago? Did you or didn't you?

A. A fellow—fellows was all going on that side.

Q. Answer the question. Didn't you testify to that two minutes ago? Did you or didn't you?

A. A fellow was only on one spot what I seen. I didn't see any on the other side. I never see the others—that there was some on the other side.

(Testimony read by stenographer.)

Q. You did say that, didn't you?

A. Maybe I don't understand you right. The people was not on the other side. They was on this side.

Q. You knew before you went to that place

that there was going to be trouble there, didn't you?

A. Never know that before.

Q. Let me call your attention to this testimony given by you before the Assembly Investigating Committee, listen to this; didn't I put this question to you: "And you thought there would be trouble on the part of the strikers when this eight o'clock train got in," do you remember me asking you that question before the Assembly Committee?

THE COURT: Read him the answer, and ask him if he said that.

Q. And didn't you say in answer to that question, "Yes"?

A. I don't understand that.

Q. Well, you gave testimony before the Assembly Committee, didn't you?

A. In Chrome, do you mean?

Q. In Chrome, in Roosevelt?

A. Yes.

Q. Isn't this correct, and didn't you testify as follows, before that committee, on page 329, some time since this thing happened; now listen to this: "And you thought there would be trouble on the part of the strikers when this eight o'clock train got in"; that was the question, and didn't you answer, "Yes"?

THE COURT: Answer it whether you did or not.

A. Did I tell you yes?

MR. WESCOTT: It is so perfectly comparable that this witness, being of the nationality he is, and of the intelligence he obviously is, he ought to be acquainted with the situation as it existed before this Legislative committee. Now, to pick

out an isolated question likt that, and an answer, is taking an undue advantage of the ignorance and inexperience of this man. If counsel would read the preceding and the succeeding questions and answers, then what is obvious to your mind and my mind, this witness would answer to.

THE COURT: Mr. Attorney General, you can ask him about that, but this is perfectly competent question, and the witness ought to answer it yes or no.

By THE COURT:

Q. What do you say? Did you answer that question yes or no?

A. I understand that what he asked me I understand it.

A. That is not the question. The question is did you say yes?

A. I can't say now before I don't understand it.

By MR. STRICKER:

Q. Do you understand my question?

A. No.

Q. All right. We will start all over again. Let read you a few questions and answers before that answer?

A. Go ahead.

"Q. Was it very quiet around Liebig's that morning when the ties were on the track," and you answered, "Yes." Do you remember that, do you?

A. Yes.

Q. Very quiet, no trouble there," and you answered, "No"; do you remember that?

MR. COAN: What page is that?

MR. STRICKER: Page 329.

MR. McCARTER: Never mind looking at Mr. Voorhees. Look at Mr. Stricker.

MR. WESCOTT: Never mind what this gentleman says. Just do the best you can.

Q. Do you remember that?

A. Yes, the people were very quiet.

Q. No. Do you remember me asking the question and you giving the answer before the committee at Roosevelt? Well, now, let me read a whole page to you and perhaps we can bring it back.

"Q. Why did you go up to Van Ness's Hall to get Frescini?

"A. I thought it was nobody here to watch them fellows. I was all alone here."

MR. WESCOTT: This I object to.

MR. STRICKER: I am taking your suggestion. Same page.

THE COURT: I think Mr. Stricker is entitled to an answer to his original question. Now, the witness ought to say whether he remembers saying that or not. He certainly remembers or he does not remember it. He ought to say one way or the other.

MR. STRICKER: I think if I am permitted to finish this half page that we might get something.

MR. WESCOTT: I object to that half page.

MR. McCARTER: That is the very thing you wanted.

MR. WESCOTT: It is getting into the case what your Honor ruled out a dozen times. Getting it in the back door.

MR. McCARTER: Mr. Attorney General, a moment ago you said that ought to be done.

MR. WESCOTT: No, I did not. I said the preceding and succeeding question and answer.

MR. STRICKER: That is what we are going to do. Two questions before.

MR. WESCOTT: I seriously object.

THE COURT: I overrule the objection that is now being put, but I say the witness must answer your original question.

MR. STRICKER: All right.

THE COURT: Now you may put that to him again and he must answer it yes or no.

Q. Didn't you, on the occasion of our giving testimony before the Assembly Committee at Roosevelt, testify as follows, and as appears on page 329 of the minutes of that investigation:

"Q. And you thought there would be trouble on the part of the strikers when this eight o'clock train got in"?

"A. Yes."

A. I can't say yes, because I don't know that that fellow going have some kind of trouble. I can't say yes.

THE COURT: He says he don't say yes.

MR. STRICKER: No, I beg your Honor's pardon. I do not want to be as emphatic as that. He simply says that he would not say yes, but he does not respond as to whether or not he made this answer.

THE COURT: Answer whether or not you said that at that time?

A. I don't know.

Q. And didn't you testify at that time as follows:

"Why did you go up to Van Ness's Hall then to get Frescini?

"A. I thought it was nobody here to watch them fellows, I was all alone here, I thought it was better I go and get some help to keep the people in order."

A. That is all right, yes.

THE COURT: He testified to that once, you know.

Q. Why was it necessary for you to keep the people in order that morning?

A. Well, because I was afraid they may go get a couple of whiskey or so and maybe they go and get some trouble.

Q. What kind of trouble?

A. You know drunk man, you don't know what he do, he make any kind of trouble.

Q. The fact is, you were not afraid that the Hungarians would make the trouble, were you?

A. Hungarians just the same like the other nations.

Q. Weren't you afraid of the Italians more than you were of the Hungarians, as to the trouble?

A. Was afraid for all of them. I was not afraid for nobody, because I can't tell you before that something happens.

Q. But weren't you afraid that the Italians were going to make trouble that morning on the arrival of that eight o'clock train?

A. I cannot answer that.

Q. And didn't you testify before the same Investigating Committee as appears on page 331,

"And you were afraid the Italians might make trouble so you went and got Frescini, that is correct," and you answered, "Yes." Did you so testify?

A. I can't answer this.

MR. STRICKER: I guess that will be all, Mr. Yeager.

RE-DIRECT EXAMINATION:

By MR. WESCOTT:

Q. When you were asked some million or hundred thousand times the question whether you said yes or not, I want to see if you can remember something.

MR. STRICKER: May I be permitted to ask one more question, Mr. Attorney General?

MR. WESCOTT: Yes.

By MR. STRICKER:

Q. You got on the train, didn't you, that day?
A. No, I was not on the train.
Q. And didn't one of the railroad detectives put you off, or tell you to get off?
A. No.
Q. And by the way, wasn't Fescini there?
A. Frescini?
Q. Yes?
A. He was where took to me—
Q. He was there when the eight o'clock train arrived, wasn't he?
A. Yes, he was.
Q. And he had on a yellow overcoat or raincoat?
A. I can't remember what he got. But he was there.
Q. He had an umbrella, did he?
A. I can't tell you that. I tell you he was there. That is enough for you.
Q. Thank you?

By MR. WESCOTT:

Q. Referring to page 329 I find that the record is correct. It purports to say, question by Mr.

Quinn, "Afraid there might be trouble"? "A. Yes. I was afraid maybe after awhile they going to have some trouble."

THE COURT: Are you asking him if he testified to this?

MR. WESCOTT: Yes. I want to ask the witness if he can remember it.

"Q. And you thought there would be trouble on the part of the strikers when this eight o'clock train got in?

"A. Yes.

"Q. In case any strikebreakers were on it?

"A. Yes.

"Q. And for that reason you went and got Frescini"? Do you remember that?

A. Yes, sir. Well, you speak another time.

Q. The trouble that you thought might arise you anticipated might come from strikebreakers;—

MR. STRICKER: I object to that.

THE COURT: I overrule the question.

MR. WESCOTT: All right. That is all.

RE-CROSS EXAMINATION:

By MR. STRICKER:

Q. Do you know a man by the name of Russo, an Italian who was one of the strikers?

A. I know many fellows, but I don't know the names.

Q. You did not see any Italians with guns that day, did you, or revolvers?

A. No.

GEORGE THOMPSON, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Thompson, where do you live?
A. 55 Christopher street, Carteret.
Q. Did you live there last January?
A. Yes, sir.
Q. Do you know where the Williams & Clark station is on the Sound Shore Road?
A. Yes, sir.
Q. Were you down at that station on the morning of January 19th last?
A. I was not by the station, but I was away from it about 300 yards.
Q. Where were you?
A. About 300 yards away from the station.
Q. Which side of the station?
A. Right hand side going down.
Q. Were you towards Carteret or toward Elizabeth?
A. I was toward Elizabeth—toward Carteret.
Q. State whether or not you were on the railroad track?
A. No, I was not.
Q. Well, where were you with relation to the railroad track?
A. I was up on the public road.
Q. What street was that?
A. Railroad avenue.
Q. Did you see down by Williams & Clark station?
A. Sure.

Q. Could you see the office of the Williams & Clark plant?

A. Yes, sir.

Q. Did you see the eight o'clock train come into the Williams & Clark station?

A. Yes, sir.

Q. Now, as that train came in, what if anything, took place?

A. Why, there was some railroad ties on there, and a red sweater in the middle of the track.

Q. What happened after that?

A. The strikers tried to find out whether there were scabs on the train. They didn't find any, so they went by, left the train go.

Q. And did the train move on then?

A. Yes, sir.

Q. What happened after that?

A. Just when the train started pulling up towards Carteret, a large part of the men, around thirty to forty men, came out from the Williams & Clark office there and started in firing at the strikers.

Q. Where did you see that body of men first?

A. I seen them inside of the gate.

Q. And where did they go?

A. They went towards the train.

Q. Where were they when they started to fire?

A. They was on the other side of the railroad towards the plant.

Q. On the side of the railroad towards the plant.

A. Yes, sir.

Q. On the side of the railroad towards the plant?

A. Yes, sir.

Q. And how far away from the railroad?

A. Oh, about 25 or 50 yards.

Q. State whether or not you noticed or observed anything before the shooting began?

A. I only saw one fellow in the crowd there raise a pistol up in the air and shoot.

Q. And what followed that?

A. And then all the deputies started in shooting at the crowd.

Q. When all the deputies started to shoot, did they shoot in the air or not?

A. Some of them shot up in the air and some of them shot in the crowd.

Q. What happened after that?

A. When they started in shooting the strikers all started in to run.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. How far away were you from the station?
A. Oh, about two or three hundred feet away.
Q. Right straight down the road?
A. Yes, sir.
Q. Towards Carteret?
A. Yes, sir.
Q. Could you see the obstruction on the track from where you were?
A. Yes, I could see it.
Q. What?
A. Yes, sir.
Q. Was there a crowd around it?
A. Oh, yes; there was a crowd around it.
Q. And the train, after the obstruction was removed, just divided the crowd, didn't it?
A. Yes, sir.
Q. Leaving some on the right and some on the left?
A. Yes, sir.
Q. About an equal number on one side of the train?
A. Oh, there was a majority of the men on the other side.
Q. And you noticed this sweater?
A. Yes, sir.
Q. Was that on a pole?
A. On two sticks.
Q. Two sticks on the track?
A. Yes, sir.
Q. Did you notice whether the strikers had any stones or clubs in their hands?
A. I didn't notice anything. I didn't see any strikers have anything in their hands.

Q. Was the train in the station before there was any shooting?

A. No, sir.

Q. Where was it?

A. They were just pulling out when the shooting commenced.

Q. Pulling away from the station?

A. Pulling towards the station.

Q. Pulling towards the station?

A. Yes, sir.

Q. The train stopped below, hadn't it?

A. Yes, it stopped at the Williams & Clark station.

Q. What station are you talking about when you say it was pulling towards the station?

A. Towards Carteret.

Q. The train was pulling towards Carteret station?

A. Yes, sir.

Q. How near were you to Carteret station? Right by it?

A. No. I was about four hundred yards.

Q. Four hundred yards away from Carteret station?

A. Yes.

Q. Well, had the train left the Williams & Clark station before the shooting commenced, toward Carteret?

A. Yes. It just left, just no more than had started in leaving the Williams & Clark station, that is when they started in shooting.

Q. You thought there were thirty or forty men came out?

A. Yes, sir.

Q. Is that an estimate, or a guess, or a number?

A. I couldn't tell you--

Q. Well, you were several hundred feet away, weren't you?

A. Yes, sir.

Q. And is that just your guess?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. Might have been twenty, might have been sixty?

A. Oh, it wasn't sixty.

Q. Might have been fifty?

A. I don't think so.

Q. What?

A. It looked to me about thirty or forty men.

Q. You have talked about this, I suppose, with some of your friends over in Roosevelt since then?

A. Oh, no.

Q. What?

A. No, sir.

Q. Never talked with anybody about it?

A. No, sir.

Q. Not a soul?

A. No, sir.

Q. Not a person that you know of have you ever spoken—

A. Only my mother and father.

Q. Haven't you talked to any of these gentlemen sitting here?

A. Oh, yes. I talked down in the Borough Hall. I don't know what one it was though.

Q. When was that?

A. That was the same date of the shooting, that afternoon.

Q. Which of the gentlemen, do you remember?

A. No, sir; I do not.

Q. Did you notice whether all these—how many of these thirty or forty men had any clubs?

A. Yes, sir. Some of them had night sticks and some of them had—

Q. Some of them had night sticks?

A. Yes, sir. Some had them rifles, long guns, and pistols.

Q. Well, now, are you able to designate which had which and how many, I mean how many of each?

A. No, sir; I could not.

MR. McCARTER: I guess that is all.

MR. FLORANCE: I desire to read this dying declaration before the State closes.

(Declaration marked Exhibit P-13 read to the jury by Mr. Florance.)

MR. FLORANCE: The State rests.

MR. McCARTER: We move an acquittal against Mr. Smith. Absolutely no evidence whatever to connect him in any way with this matter.

THE COURT: What does the State say to that?

MR. FLORANCE: The State has nothing to say to that and will abide by your Honor's ruling.

THE COURT: Let such an order be made. Well, I suppose that I will have to direct the jury to acquit him when the time comes. I do not see what I can do now.

MR. McCARTER: Well, any way your Honor desires about that.

We next move to acquit all of the other defendants except Messrs. Williams, Mullen, Bavier and O'Mara, as there is no evidence whatever that any of the others did any shooting, or that they, let alone, shot and killed the deceased. Absolutely none.

THE COURT: Your motion I will refuse because there is evidence showing that all of the others were with this party who went out together, and by some of whom the shooting was done. Now, I do not suppose you contend that if a body of men go out for the purpose of shooting, the mere fact that their numbers are so great that they cannot be identified, that they would have to be acquitted. As I understand, the claim of the State, it is that these men went out in a body to do an unlawful act, and that they combined together to do it, and they are not always required to prove the actual fact of combination. The jury may infer that from the circumstances and surroundings, or from the facts which appear

in the case. So I will decline that motion and you may take an exception to it.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. McCARTER: I was going to say to the court that as I remember the evidence there is absolutely no evidence against these other men, of any kind or sort, or connection with the matter at all.

THE COURT: Mr. McCarter, I have disposed of that. I understand the witness testified this man was in the body who went out to shoot, or with the body who went out and did the shooting. How forceful that evidence is, is for the jury.

MR. McCARTER: All right, your Honor.

Mr. Stricker opens the case for the defendants.

J. ERNEST WARING, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Waring, you are one of the persons that Yeager identified, aren't you?

A. I am; yes, sir.

Q. And you sat right here?

A. I did.

Q. And you stood up, and he identified you as being one of the deputies?

A. He did, yes.

Q. Well, are you indicted?

A. Not that I know of.

Q. You are not a deputy?

A. I am not.

Q. What is your business?

A. I am superintendent of the Liebig Works of the American Agricultural Chemical Company of Carteret.

Q. On the morning of the 19th of January, were you at the Williams & Clark plant?

A. I was not.

Q. Where were you?

A. At the Liebig Works.

Q. So much for that. Now, will you tell us whether you are familiar with the circumstances surrounding what preceded the immediate trouble on the 19th, at your plant?

MR. WESCOTT: I object.

THE COURT: He can answer that yes or no.

A. Yes.

Q. There has been, of course, in this case a great deal of talk about the Liebig's and the Williams & Clark's. Those plants are separate plants, both owned by what company?

A. The American Agricultural Chemical Company.

Q. And you said that you are superintendent of one of those plants?

A. Of the Liebig Works.

Q. They are about how far apart down there on the Sound?

A. About a mile and a quarter.

Q. How long had the strike been in operation?

MR. WESCOTT: I object.

THE COURT: How is that competent?

MR. McCARTER: I want an opportunity, if we may, to indicate just what occurred for the preceding two weeks prior to the occurrence of the 19th. We want to show by this witness that as soon, or very shortly after the strike commenced, they had disorder at both of their plants, that some of their employes were shot at by the strikers, their windows were broken of their plant, and danger to their property and their lives, as they felt, became so great, as has just been opened by Mr. Stricker, they felt impelled and required to call both upon first, the Borough authorities, and later the county authorities, the Sheriff, for aid and protection, under the statute, and that it was because of that situation that they came to the Sheriff and secured from him his assistance, and it was he that employed and suggested the employment of the deputies, and that the deputies, whatever their number was, came down and started in to protect this property, and

what occurred after they got there, all leading up to the situation—

THE COURT: Mr. McCarter, a great deal of what you are stating would perhaps be competent, and a great deal of what you are stating I should rule out. Now, I will not prevent you from proving the employment of these men by the Sheriff, and you may go so far as to show what instructions he gave them. And I think that will answer your purpose and avoid the necessity of proving what happened for two or three weeks there for the purpose of laying what you call a foundation for this application.

MR. McCARTER: I think we ought to be able to show the disorder that occurred, the character of this mob of strikers, what they did, and what we had a right to suppose they were going to do, from what they did, what their conduct was for two weeks anterior to this time.

THE COURT: This witness is not a defendant, his action could not have been influenced by that at all. This man is not a defendant.

MR. McCARTER: I know that, but we do not think that this defence is limited to meeting the isolated particular transaction of the 19th.

THE COURT: If you will offer it upon the theory that the defendants were influenced by it, then it ought to be shown that they, the defendants, knew about this thing.

MR. McCARTER: Certainly.

THE COURT: That is what you ought to do.

MR. McCARTER: We have to show first the

circumstances of the situation, haven't we? That situation commenced before the deputies got there at all, before they were sworn in.

THE COURT: All that I propose to overrule, and exclude, everything that happened before the deputies got there.

MR. McCARTER: I offer to prove by this witness what occurred in the way of violence and disorder, and attempted destruction of property and injury to life, which prevailed upon him, as an officer of the Agricultural Company, to seek protection from both the local authorities in Roosevelt, and ultimately from the sheriff of the county, because of the riotous character of the proceedings that this very same crowd of men who were in front of their plant on the morning of the 19th of January.

THE COURT: Before the deputies arrived there?

MR. McCARTER: Yes, sir.

THE COURT: That offer I overrule. And you may take an exception.

Q. Did you interview the sheriff?
A. Yes.
Q. What was that, Mr. Waring?
A. On the morning of the 5th of January.
Q. Where was that?
A. In New Brunswick.
Q. What place in New Brunswick?
A. In the office of Judge Daly.
Q. The Judge who sits on the bench here with Justice Bergen?
A. Yes.

MR. WESCOTT: I object to that. I do not see its relevancy to this case in any attitude.

THE COURT: I do not hear you.

MR. WESCOTT: I do not see the relevancy of these questions and answers to this case in any aspect. What has a conversation between this gentleman and the sheriff got to do with what happened—

THE COURT: He is not asked for the conversation.

MR. WESCOTT: Well, I know, but the fact that he had a conversation with the sheriff in Judge Daly's office, has nothing to do with this case.

THE COURT: I imagine Mr. McCarter, in view of my ruling, intends to limit his questions to the employment of these deputies by the sheriff, at the suggestion of the owners of this mill.

MR. McCARTER: I am going entirely to your Honor's ruling.

THE COURT: So I will allow that question on that theory.

Q. What occurred at the meeting you have just referred to?

MR. WESCOTT: I do not want to be disagreeable—

THE COURT: Tell him not to give conversations; he must give the substance of what he asked.

Q. Did you give notice to the sheriff that you felt that your property was in danger?

THE COURT: No, what was the result?

MR. WESCOTT: I object.

THE COURT: That I will allow.

A. We did.
Q. And that you would hold the county liable?
A. We did.

MR. WESCOTT: I object to that.

THE COURT: I will allow that.

MR. WESCOTT: What on earth can that have to do with this case?

MR. McCARTER: I think it has a great deal to do with it.

THE COURT: Proceed.

Q. What was the result of your interview with the sheriff?
A. We demanded protection.

MR. WESCOTT: I object.

THE COURT: Answer the question, what was the result.

A. He agreed to give us protection.
Q. Had you previously applied to the Borough for protection?

MR. WESCOTT: We object to that.

THE COURT: I will allow that.

A. We had.
Q. With any success?
A. Not so far as our property was concerned.

THE COURT: Just answer the question.

Q. Who chose the deputies?

MR. WESCOTT: I object to that.

THE COURT: I will allow it.

A. I don't know.

Q. When did the deputies arrive?

MR. WESCOTT: We object to that. What difference does it make when they arrived?

THE COURT: Well, I think Mr. Attorney General, it makes some difference. I think the defendants are entitled to show how they got there, that is, that they practically did not come there, or gathered together in an unlawful manner, but they may be gathered together lawfully and yet commit a breach of the peace afterwards.

MR. WESCOTT: That is exactly it. They may have been gathered together ten years ago lawfully, and that does not make any difference on the 19th of January.

THE COURT: I think the defendants are entitled to this proof. Proceed.

Q. (Repeated by stenographer.)

A. Those that came to the Liebig works began to arrive late in the evening of January 5th.

Q. And those that arrived at Williams & Clark reached there?

A. I can't answer, I don't know.

Q. You don't know anything about that?

A. I wasn't there.

(Whereupon, an adjournment was taken until Thursday, May 27, 1915, at 9:30 a. m.)

New Brunswick, N. J., May 27th, 1915.

Met pursuant to adjournment.

J. ERNEST WARING resumed.

DIRECT EXAMINATION (Continued):

By MR. McCARTER:

Q. Now, Mr. Waring, following the rulings of the Court, I will not ask you the question with regard to what transpired anterior to the appointment by the county of the persons of the deputies. Will you tell us what troubles you experienced at your Liebig plant the day before the 19th?

MR. WESCOTT: I object.

THE COURT: I overrule that. At the Liebig plant? I do not understand these defendants were there.

MR. McCARTER: The defendants were not there, no, your Honor, but the Liebig plant is the same management, the same concern exactly as the Williams & Clark's, and I propose to show that the same strikers, on the morning before the 19th, shot at a man in front of Liebig's, that they returned there on the morning of the 19th, on the arrival of the seven o'clock train, and created disorder, and that they then marched, as already partially appears, from the Liebig plant to the Williams & Clark plant, arriving there at the eight o'clock train, when the occurrences in question occurred, and that before they reached the Williams & Clark plant, the fact of the trouble that had taken place at the Liebig plant was telephoned to the Williams & Clark plant and brought to the notice of the deputies.

THE COURT: You may prove what happened that morning. Not what happened the day before.

MR. McCARTER: If the strikers had shot at people in connection with our plant the day before?

THE COURT: I have ruled and you may take an exception.

MR. McCARTER: Yes, sir; I take an exception respectfully. I offer to show that on the day before the occurrence in question a mob of strikers, many of the same who were in front of the Williams & Clark plant on the 19th, in front of the Liebig plant, belonging to the defendants, the American Agricultural Chemical Company, created great disorder, broke glass of buildings, and shot at a man who was supposed to be, and was in fact connected with the Liebig plant.

THE COURT: That I overrule.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. McCARTER: We also offer to show that for a period of two weeks prior to the—

THE COURT: That I overruled yesterday. I overruled that offer yesterday.

MR. McCARTER: Well, I did not make the offer as fully as we can prove it, and I want to have the record show.

THE COURT: Just read the offer of yesterday.

MR. McCARTER: Page 686. "I want an op-

portunity, if we may, to indicate just what occurred—

THE COURT: You made a distinct offer which I overruled. There is no use repeating it.

MR. McCARTER: Page 690. "I offer to prove by this witness what occurred in the way of violence and disorder and attempted destruction of property and injury to life, which prevailed upon him, as an officer of the Agricultural Company, to seek protection from both the local authorities in Roosevelt, and ultimately from the Sheriff of the county, because of the riotous character of proceeding that these very same crowd of men, who were in front of their plant on the morning of the 19th of January."

"THE COURT: Before the deputies arrived there?"

"MR. McCARTER: Yes, sir.

"THE COURT: That offer I overrule."

MR. McCARTER: This is after the deputies arrived.

THE COURT: Make your offer then.

MR. McCARTER: I offer to prove, after the arrival of the deputies, which I think was on the 4th of January, and for practically all of the intermediate period between that and the 18th, a crowd of strikers from the Williams & Clark and Liebig plants, owned and controlled by the American Agricultural Chemical Company, frequently surrounded the plant of Liebig's and of Williams & Clark, that they fired stones and broke windows in the plant, that they charged the gate, that they entered with force, and by force took workmen out who were working during the strike, of the

Williams & Clark plant, and that they surreptitiously sought to enter the plant at night, with what purpose we do not know, and in a word, to indicate the fact that during this entire period of ten days or two weeks anterior to the occurrences in question there was a state of continuous disorder by this mob, against these two plants. I offer to show that by this witness.

THE COURT: To show that all by this witness?

MR. McCARTER: Yes, sir.

THE COURT: I overrule that for the present. There is nothing in the case, so far as I can see, that will justify that proof. Now, if it develops before you finish your case, and you think it is necessary, you may renew your offer. For the present I overrule it.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. McCARTER: I overlooked when your Honor limited me to? Was it the day before the 18th?

THE COURT: I limit you to the 19th, the day this thing happened.

Q. Were you at the Liebig plant on the morning of the 19th?

A. I was.

Q. Had you been there all night?

A. Yes.

Q. And you were the superintendent of that plant?

A. I am yet.

Q. Just tell us what occurred in and around that plant on the morning of the 19th in connection with the strikers?

MR. WESCOTT: I object to it.

THE COURT: Well, upon what ground.

MR. WESCOTT: We are investigating what occurred at another plant, a long distance away, at a different hour in the day. Now, this is a mere attempt to get a disorder, if there was one at the Liebig plant, into this trial. That has no earthly relation to the marching of these deputies out of the Williams & Clark plant at eight o'clock on the 19th of January, and the shooting these men. It bears no relation to it at all, that I can conceive. Since this case has been on trial I have cogitated that subject, and I have tried to conjure some theory by which that evidence might bear some relation to this crime, and I can't do it. Bear in mind what we have proved. We have proven that on the 19th day of January a crowd of men left the Williams & Clark plant at the time a train came, and traversed a distance of 300 feet or over from that plant to this train, where there was a crowd of people committing disorder; they stopped the train unlawfully, boarded the train to see whether there were strikebreakers on that train. These men in that fence and building had nothing to do with that. They had no business to leave that fence and go over to that train. There was nothing in the world to call them there. There was no duty they were obliged to perform at that depot. There was nothing there to indicate the necessity of the presence of anybody other than those who were there in charge of that train. That being the case, how

can what occurred a mile or more away prior to that time have anything to do with that occurrence over at Liebig's? How can you imagine any relation between them? Particularly in view of the opening in this case by the defendants. The opening in the case by the defendants consisted of three propositions; first, to show that there were strikes in that neighborhood, there were disorders prior to the 19th day of January. That must be conceded, it seems to me, that by no process of reasoning or imagination can you connect those prior disorders with this shooting on the 19th day of January. The next proposition that the defence offered here was that these defendants were not there on the 19th day of January, with the exception of three or four of them. Now, how can the previous condition of disorder bear any relation to that proposition? Their third proposition was justification, namely, that the people at that depot fired on these men that were in this plant, and they retaliated by firing in the air. Now, that is the defence and all there is of it. If you exclude disorders which occurred prior to the hour of eight o'clock at this little depot, then that part of the defence is gone, and it ought to be excluded because, as I have stated, and I challenge anybody to show any conceivable relation between the prior disorders and what occurred on the 19th of January. If there is not any relation between them, then your Honor is thoroughly justified in excluding that mass of testimony. Bear in mind that if you once go into that question, where will this trial end? Where will it end? The State, in rebuttal, will be obliged to call hundreds of men in relation to these prior acts of disorder, if there were any. We are obliged to do it. Now, why? Simply to rebut an

irrelevant and unrelated state of circumstances. Now, why strain the situation? No wrong can be done these accused men by excluding a great mass of history which bears no relation to this crime committed there on that morning. Why go into it at all? If you go part of the way and do it, you have got to go the whole way. If you admit some of these circumstances you have to admit all. If you admit all, then the State has got to take up the immaterial burden of detaining your Honor and this jury here for some weeks, perhaps, to investigate this alleged strike, its history and all its circumstances. Now, if there were anything in that case that legally related to the crime, or what we allege to be a crime committed about eight o'clock on the 19th of January last—I say if there were anything in this mass of proposed testimony that bore any relation to that, we would be the last people in the world, in the interest of justice, to undertake to exclude it. Now, it would have the effect of simply confusing the issue, which is whether these accused men committed a crime about eight o'clock on the morning of the 19th of January last, when armed, they left a place of safety, went across 300 feet at least of unoccupied territory, and engaged in a piece of what they may have imagined to have been disorder, which resulted in their drawing arms and shooting helpless citizens. Now, for the life of me—we discussed this thing, turned it over inside and outside, and I can't conceive any real bearing. I will frankly admit that on the subject of motive, on the theory that these gentlemen acted in self-defence, it might have some attentuated, some extreme relation to the matter, but in order to bring it in on that ground, on that theory, you have got to bridge the chasm between that Clark

factory and 300 feet of territory, which these men had no business to move over. There was nothing to invite them to move over there. There was no element of duty in the situation which required them to move over that space of territory. They had no business to do it. They are said to be deputies. Deputies, what for? Why, to take care of the property of that factory where they were, not deputies to go out over a piece of territory 300 feet wide, and engage in a fracas with a lot of men at a depot who had stopped a train of cars. Can your Honor imagine that there was any duty imposed upon these men to go out of that factory, and go across that piece of peaceful territory and engage in that fight, and if they did engage in that fight, then the second question I ask your Honor is to say how these antecedent circumstances of disorder, a mile away, could bear any relation to what transpired that day. So I most earnestly urge your Honor to exclude this testimony. I reiterate that unless it is excluded, we are obliged to call hundreds of witnesses here to contradict it. Now, to what purpose? What legal effect will be produced upon the issue here, whether or not these defendants are guilty of murder committed on the 19th day of January?

THE COURT: Well, I have not changed my mind. I have listened to what the Attorney General said with great care. Of course this testimony I will have to instruct the jury will have no weight unless the defendants are shown to have been thus actuated in participating in the assault as an excuse for their action. Of course if they were not there, why they were not actuated by anything they had heard that morning; whatever weight that may have, this testimony would be of very little consequence, and I would have

to tell the jury so; I think this jury is intelligent enough—it appears so to me—to understand the law when I lay it down to them, and not be misled by immaterial testimony, if it turns out to be immaterial, but this happened on the same morning, and they may set up as a defence that they had heard of this other fracas in the morning, whatever it was—I don't know what it was, and it might have some influence on the grade of the offence, whether it should be manslaughter or murder in the second degree, or murder in the first degree. Of course if it was in connection with these defendants—if they weren't there, it is useless. You may proceed; I will allow the question.

By MR. McCARTER:

Q. Will you please describe what occurred in the way of disorder at and about the plant of the Liebig Company on the morning of the 19th?

A. At about 6:40 in the morning, I noticed a large crowd of men, probably about 300 were packed very closely together on the railroad right of way, about 200 yards from our factory gate, and about 100 feet from our factory fence, and although our property is all around, we own all the property there except the railroad right of way. And I walked out and walked down and these men were congregated about an obstruction on the railroad track, and the sheriff had—

MR. McCARTER: A little louder.

A. The sheriff had taken—they were talking loudly and brandishing their sticks around and using profane language, and because of the attitude in that way—and they had been so for the two previous days—

MR. WESCOTT: Strike that out.

THE COURT: You are not to give your view, just state the facts.

A. The sheriff had taken his guards and put a hundred of them down on the street right of way, which is about 80 feet to the east of the passenger right of way, and he had them there right opposite this crowd, and in the meantime the United States mail train that carried passengers came down very slowly and stopped about one hundred feet from this obstruction, and the Chief of Police got off the train and walked up to this crowd and said something to them. What he said, I don't know. The sheriff walked over to this crowd of strikers with two of his men, and he engaged in conversation. The chief of police then left the mob and walked up towards the police headquarters, which is about five or six hundred feet away, with one of the strikers, or with a man that was in the crowd who stood around for probably two or three minutes, and then some one took the obstructions off the track and the train proceeded, but it didn't make its regular stops at our Liebig station; it kept on through to the next station, and the crowd ran alongside of the train, a great many of them, until they found it wasn't going to stop at the station, and then they scattered, and some of them went over to the head of our lane, up further along the road, about 100 feet from police headquarters, and they were there harangued by some man who was brandishing his arms around and talking in a loud tone. What he said, I don't know; I was probably 500 feet away from him. The rest of the crowd went up the track, up the road, in the direction of Carteret and Williams & Clark plant.

Q. What time was that?

A. The train is due there a very few minutes to seven. It was about 6.40 or 6.45 when I noticed the crowd.

Q. Was the sheriff there at the Liebig plant himself?

A. He was.

Q. And was news of the approach of the strikers up towards the Williams & Clark plant, telephoned to Williams & Clark plant?

A. I don't know.

Q. They went up the railroad track?

A. Up the railroad track, and up the road, some of them.

Q. Did they go en masse, or how?

A. Some of them straggled, mostly in a solid mass. There was one bunch of probably fifty or sixty.

Q. Carrying anything?

A. Clubs and sticks, as far as I could see.

Q. Now you have already testified that you were the man who sat here at the table and were identified by Jaeger as having been one of these deputies who was out here shooting at eight o'clock in the morning, at Williams & Clark plant. Did Jaeger ever work for your company?

A. He did, yes.

MR. WESCOTT: I object to that, if your Honor please.

THE COURT: What was the name?

MR. McCARTER: Jaeger.

MR. WESCOTT: I withdraw the objection.

Q. Did he know you when he worked for you. Did he come in contact with you?

A. Saw me every day through the plant; sees me every day in Carteret now.

Q. How long has he known you and seen you?

A. He was hired some time last year. I don't

remember the exact time. Several months he was employed there.

Q. This boy Conlon testified yesterday that he was put out of this plant about a week and a half after the 18th or the 19th.

MR. WESCOTT: I object to that.

MR. McCARTER: Let me finish the question.

Q. (Repeated by stenographer.) He later said, on cross examination, that he was put out of the office and put in the factory. Was there any force about that change in his position?

MR. WESCOTT: I object to that if your Honor please.

THE COURT: I do not think the boy said that.

Q. Was there any increase in his wages in the factory?

A. There was.

Q. What?

A. He was increased from $5 a week, to $1.15 a day, and employed in the bag room.

MR. McCARTER: That is all.

CROSS EXAMINATION:

By MR. WESCOTT:

A. How far is the Liebig plant from the Williams & Clark plant?

A. Approximately a mile and a quarter; a mile and a half, not more than a mile and a half.

Q. And the American Chemical Company is one of the Rockefeller institutions, isn't it?

MR. McCARTER: I object.

THE COURT: I overrule the question. I don't think that is material.

MR. McCARTER: I am surprised at that question.

MR. WESCOTT: Let us see; what has the ownership of the Liebig plant to do with this case. Now my friend here was very particular to bring out the fact that the Liebig Company belonged to the American Chemical Company. It seems to me that this is perfectly—

THE COURT: I do not think that makes any difference, whether it was Mr. Rockefeller or Mr. Morgan or myself, if a crime was committed, that is all there is to it.

MR. WESCOTT: It doesn't in a legal sense, I agree with you. That is all.

DIRECT EXAMINATION:

RALPH W. DEACON, a witness produced on behalf of Defendant, being duly sworn according to law, on his oath saith:

By MR. STRICKER:

Q. Mr. Deacon, where do you live?

A. Elizabeth, New Jersey.

Q. And where are you employed?

A. The United States Metal Refining Company at Chrome.

Q. What is your position there?

A. Superintendent of the plant.

Q. Superintendent—

A. Of the plant.

Q. The United States Metal Refining Company?

A. Yes, sir.

Q. Where is that plant located as regards the works of the Williams & Clark Fertilizer Company?

A. South of it, on the sound shore.

Q. How do you reach your work?

A. By the Central Railroad train from Elizabeth.

Q. And does that take you past the station of the Williams & Clark plant?

A. Yes, sir.

Q. And what train do you usually take to reach your office?

A. The one that reaches Chrome about shortly after eight o'clock in the morning. I don't remember the exact moment.

Q. Were you on that train on the morning of January 19th?

A. I was.

Q. Which car?

A. Second car—second car from the engine—from the locomotive.

Q. Second car?

A. From the locomotive.

Q. Which side of the car were you sitting in, if you were seated at all?

A. On the easterly side, left hand side facing the locomotive.

Q. As you were approaching the station that morning, did anything unusual occur?

A. The Williams & Clark station?

Q. Yes, the Williams & Clark station?

A. There was a curve around the railroad just before that, and we came around that curve, the train slowed down very quickly, which was unusual; I was reading my newspaper, and I put it down and looked out the car window which was on the side of the curve, and I saw a large assemblage of men at the Williams & Clark station.

Q. Can you indicate on that chart where you first saw this large crowd?

A. Where the crowd was?

Q. Yes, and where your train was, if you can, as shown on the map.

(Witness descends to the map.)

A. The train was up here.

Q. Yes.

A. The crowd was assembled, principally—on this cross track and was spaced in here around the station.

Q. One moment please; can you indicate on this map the place where the crowd was congregated; just indicate with this pencil.

A. Yes.

Q. Show it so it can be seen, please.

A. (Witness indicates on map.) The bulk of the crowd.

Q. All right, sir; you may take your seat now, unless you want to indicate something on there.

A. The principal crowd, dense crowd was where I have indicated with the pencil line here on this cross track, and the place back of it, where there was a hill of sand.

Q. You have no connection with the Williams & Clark Company, have you?

A. Not in the slightest.

Q. Nor the Liebig Company?

A. No.

Q. Nor the American Agricultural Company.

A. Not the slightest.

Q. Now proceed, and tell us what happened, if anything, after you observed this crowd?

A. The crowd as a whole was facing towards the train, and directly in front of the crowd and on the track on which our train was proceeding, there was an obstruction in the form of two railroad ties; I made an exclamation to that effect and a number of other persons in the train immediately joined my side, and my attention for the moment was diverted in the attempt to raise the car window to put my head out of it, and I was unsuccessful because the car was of the type that the windows only go up about six inches. The train was on the curve and proceeding slowly. There were quite a number of men along the track, each side of the track, up towards the train, and as the train proceeded around the curve, these men began to climb on the platform. When I failed to get that window up, I observed the men on the platform peering in through the car window; I was not looking out the window then—those that are up in the car. Men were on the

platform looking in through the end window, and I again glanced out the window, and by that time the train had gone sufficiently around the curve that I couldn't any longer see the crowd at the station. It was hidden from my view on account of the way the train proceeded. We had not yet reached the station, and my attention then was broken, and a group of men who had apparently come from the Williams & Clark gate house, most of whom had just turned the corner of the fence, and some of them were still coming around the corner, they turned and walked along the cinder road next to the fence until they reached the car track, when they turned around toward the station; there was laying there some heavy pieces of railroad scale parts, and I particularly noticed they all walked up until they turned around these scale parts as a turning point.

Q. Will you indicate that on the chart, the part you speak about being the scale part?

A. It was around this corner of the fence where I first noticed them. Most of them had reached there. The scale parts were right in here, at the angle made by the two tracks.

MR. WESCOTT: Did he call them scale parts.

A. Parts of a railroad scale, large pieces of heavy iron.

Q. Go ahead.

A. The men walked along across here and turned around the scale parts that were there, turned down to the station which was in that direction (indicating).

Q. Did you notice any pole on the track with a red sweater on it or a red cloth?

A. I have no recollection.

Q. Well, what happened then as these men walked along that track?

A. The majority of the men had rounded the scale parts, some were still making the turn, as the train drew up to the point where the obstruction was—or had been.

Q. Where was the obstruction?

A. When I saw it, it was so far away that I can't give the exact point, but the appearance was it was right across here, and the crowd banked densely back of it, but not in front of it. It would appear that the locomotive of the train had stopped at a point where the obstruction was rather than at the usual point, where it stops at that station.

Q. Did anything happen then, about that time?

A. Just as the train stopped there were several shots fired in quick succession, similar to what had occurred the morning before, at the Liebig plant.

MR. WESCOTT: No, no.

THE COURT: Never mind that, tell what happened that morning.

MR. WESCOTT: I move that be stricken out.

THE COURT: Strike out the last part of that.

MR. WESCOTT: Do not try to inject anything in that way.

MR. McCARTER: I don't think the Attorney General ought to tell the witness not to interject. I object to the Attorney General making those remarks.

THE COURT: Well, he was volunteering something that he was not asked, that is quite clear. He was asked what happened that day, and he is now trying to tell what happened some other day.

MR. McCARTER: He is not acquainted with

your Honor's ruling. He was not in the room.

THE COURT: He was not answering the question.

MR. McCARTER—He may—

THE COURT: We will not waste any time. I have ordered that part stricken out. Now, Mr. Witness, just answer the questions and not give your views.

MR. McCARTER: We object, and respectfully except to the exclusion by the Judge of the remarks made by the witness with regard to the similarity between the character of the shots that he heard that day and the character of the shots he heard the day before.

THE COURT: That is not what he said.

MR. McCARTER: Well, whatever was said.

THE COURT: I adhere to my ruling.

Q. How many shots did you say you heard fired, Mr. Deacon, on that morning?

A. The exact number I do not know, but it was several in quick succession. Four or five, maybe three or four.

Q. And which direction did those shots come from?

A. The location I do not know. My eyes at the time were on the body of men that had walked out from the plant. I was looking them over, as it were. And the shots did not come from that body, but where they came from I do not know.

Q. Could you indicate on this chart just exactly where that body of men were at the time when you first heard the shots?

A. They were not exactly in regular order, but they were walking, several abreast, and then the

rows back of one another; the head of them was about at this point here (indicating), and the last of them were just—

Q. Point to that place again, won't you please? Mark it with a dart, or something.

A. (Witness points on map.) The front of them were about here, the last were just coming around the end of the railroad scale parts at the time that occurred.

Q. Well, what happened after that?

A. Immediately after the firing of those shots the men who had come from the plant raised their guns and fired a volley over the train.

Q. What do you mean by fired a volley over the train?

A. Well, it was almost a concerted bunch of shots, almost simultaneous, quite a number of them, but the weapons, as my attention was fixed on those men, was the raising of the weapons all up in the air. It was not fired low, but high.

Q. What did you do then?

A. I jumped from my side and went to the opposite side of the train.

Q. Did you see anything after you jumped to the other side of the train?

A. Yes. I saw the men who had been grouped at the station running in all directions, across the meadows, and through the pools of water which were there, and scattering.

Q. Anything going on while they were scattering?

A. I could not see any firing, but I heard plenty of it. The men who were scattering were evidently scattering on account of the firing, and the sticks and clubs that they had in their hands, they were scattering all directions as they ran.

Q. What do you mean, brandishing them or throwing them away?

A. No. Throwing them away, discarding them.

Q. Did you see any one particular man shot?

A. I did not. You mean did I see a shot fired that hit any particular man?

Q. Yes, that is the idea.

A. No, I did not.

Q. Did you see any of these men that you saw coming from the factory aim or fire at any one particular man?

A. I did not.

Q. Did you see them fire at the men, or at the crowd?

A. After that first case, that first volley, I saw no firing except in one case, and that was not fired at a man.

Q. What did you see in that case that you name?

A. That was a man who ran alongside of the right hand side of the train, the opposite side, driving a bunch of the laborers in front of him. He fired, while I was watching him, two shots, but both of them were fired into the ground.

Q. What did he fire the shots out of?

A. A revolver.

Q. Now, did you see the mob, or the so-called strikers, doing anything about this time?

A. They were running and discarding their clubs.

Q. No. Before they ran?

A. I didn't see, after, as I say, the first assemblage first gathered, I did not see the mob of men do anything particular until I went to the opposite side of the train and saw them scattering in all directions.

Q. Well, state whether or not you saw them throwing any missiles, and if so, in what direction?

A. It was after they had started to scatter that there were a number of men gathered along this curve of the track back this way.

Q. Point it out?

A. Do you want me to—

THE COURT: No, I know where it is.

A. Gathered along there, that were throwing missiles over at the men, apparently the guards, whom I could not see, but over at the railroad station.

Q. Was that at the time they were scattering?

A. At the time those men were not scattering, but the time a large quantity of men were scattering in all directions.

Q. They were gathering on that crossing throwing missiles, you say.

A. Men were running in all directions out here, and out across here, but at the same time that those men were running, there were men standing along here, whether they had first come from here or not I do not know, but there were men here who were throwing missiles over here at the station.

By THE THIRD JUROR:

Q. What is the distance between those two points from where these men were throwing these missiles, how far is it?

A. From there to here (indicating on the map)?

Q. Yes.

A. Why, the exact distance I don't know, but it is an easy throw.

MR. McCARTER: Well, there is a scale of the map of 20 feet to the inch.

By MR. STRICKER:

Q. How many of the men were throwing missiles?

A. I didn't count them, but there were from, I should say, from six to ten at least.

MR. STRICKER: You may cross examine.

CROSS EXAMINATION:

By MR. FLORANCE:

Q. Mr. Deacon, when did you first observe the deputies come out of the Williams & Clark plant, how many were there that you saw?

A. I didn't count them. I would say that there were somewheres between 18 and 30. But I can't—

Q. When you first saw them you say it was at the corner of the fence?

A. Yes. My attention was attracted to them after the majority of them had turned that corner of the fence.

Q. Were they all together in one body?

A. In one group, yes.

Q. You are sure of that, Mr. Deacon?

A. All the ones that I saw.

Q. And they marched in one group from the corner of the fence to the railroad that crosses over?

A. The men that I saw all were in what you might call open order, walking quietly along, and all, not dense formation, but comparatively close in one group.

Q. As though they were in a company?

A. Well, as though they were going together.

Q. Were there any particular number in one row, the front row?

A. No. There was no military formation or anything of that kind.

Q. Was there any leader in advance of them?

A. No evidence of any.

Q. What did they have in their hands?

A. Clubs and revolvers, and at least one long barreled gun.

Q. Did you see more than one long barreled gun?

A. I am not positive. I can't say. I know I saw one, but whether I saw more—

Q. How many revolvers did you see?

A. I simply know that I saw a number in the hands of the deputies. They were carrying them at the time openly.

Q. Where were the clubs carried, and how were they carried?

A. Simply carried in the hand.

Q. Which hand?

A. Well, I know one or two that I can say were in the left hand, but I can't say definitely which hand.

Q. Do you remember what those men had in their right hand?

MR. McCARTER: Do you mean the men with the clubs in their left hand?

MR. FLORENCE: The men with the clubs he has spoken of.

A. I can only say in regard to one man in particular. He was walking along rather jauntily twirling his revolver in his right hand, and swinging his club in his left hand.

Q. When they marched along the fence and crossed over were they still together in open formation?

A. Practically the same as when I first saw them.

Q. And in one group?

A. In one. Practically the same as when I first saw them.

Q. Where were you when you first observed them coming out from the corner of the fence? After the train stopped?

A. No. The train was coming to a stop, and had not finally stopped. We were running very slowly, creeping along, and the train came to the final stop, the men by that time had turned the railroad scale part.

Q. When did you first hear a shot fired?

A. Just as the train stopped.

Q. And where did it seem to come from?

A. That I can't tell.

Q. You simply heard it?

A. I simply heard it and I can't tell where it came from.

Q. And you didn't see it fired?

A. I did not see it fired. I was looking at the deputies at the time. I did not see it fired.

Q. And then the deputies fired in a volley?

A. Practically in a volley.

Q. How many seemed to be firing at that time?

A. All, as far as I could tell. All that had weapons.

Q. And when they fired where was the train?

A. Standing still.

Q. And what did they immediately do after they fired the volley?

A. They started to run toward the station.

Q. Did they all run toward the station?

A. I got up and went across the train. I can't answer that.

Q. When did you hear the next shots?

A. Almost continuously after that.

Q. For how long did they continue shooting continuously?

A. Until just before the train started to proceed. The length of time I do not know.

Q. How long would you think that was?

A. Several minutes.

Q. You say you crossed over to the right hand side of the train?

A. Yes.

Q. Did you see any shooting from that side of the train?

A. Only the one that I have described a few minutes ago.

Q. And who shot that, that you described a few moments ago? Who fired the shot that you speak of?

A. A man running alongside of the—

Q. Was that man a deputy or a striker?

A. I suppose that he was—

MR. McCARTER: One moment.

A. (Continued.) A deputy.

MR. WESCOTT: He said in his chief examination that he was a deputy.

MR. McCARTER: He says he does not know.

A. Your Honor, how am I going to answer it.

THE COURT: Well, you are only to answer it according to the fact, if you know.

A. He was driving several men in front of him.

Q. What did he have in his hands?

A. Club in one hand and a revolver in the other.

Q. What men was he driving?

MR. McCARTER: If you know.

Q. What did the men look like to you?

A. Laborers.

Q. Did the train stop at the Williams & Clark station after it stopped before the obstruction?

A. It didn't stop the second time. It made the one stop and then proceeded.

Q. How did it proceed after it started from the obstruction, slowly, or how?

A. Slowly.

Q. Did you hear any shooting under the train as the train passed?

A. No.

Q. On which side of the train were you then?

A. On the right hand side. I remained on the right hand side after I went there until after we were practically to the Carteret station.

Q. Did you see any men lying on the ground on the right side?

A. No men lying. I saw a man falling into a pool of water.

Q. Describe to us just what you did see, Mr. Deacon?

A. I saw men running in all directions. I saw this one man with an overcoat on crawl through this water, which was quite deep. As the train proceeded towards Carteret I saw a man on the ground back this way from the curved track, with his foot up on a tree stump and his trouser leg pulled up, showing evidence of blood on his leg. That is the only indication that I saw that any man had been shot.

Q. And what were the men doing as they ran away, were they throwing their clubs away?

A. Those who had clubs were discarding them.

Q. Did you see any firearms among the men who were running away?

A. I did not.

Q. Did you see any shooting by the men on that side of the track, other than the one deputy that you saw?

A. I did not.

Q. These men that you say you saw lined up on the curved track running from the East Rahway road over to the main road, how many were there?

A. I would say there were from six to ten. Possibly more.

Q. You say that you saw them throwing cinders?

A. Throwing missiles.

Q. What were the missiles?

A. Pieces of cinder mostly.

Q. How large were those pieces of cinder?

A. All sizes.

Q. Now, tell us about how large?

A. Well, I saw some that were that large (indicating) and some that were just the size of a baseball.

Q. And who were throwing them out?

A. The men at the station.

Q. What men were at the station?

A. The men I could not see.

Q. Which direction were the men who were at the station toward who they were throwing the cinders going?

A. That I could not see.

Q. Did you see any other men armed on that side of the station who were driving the strikers away?

A. As the train pulled out there were men at this cross track, about where the switch comes in, this way from the passenger track.

MR. McCARTER: Will you point that out on the map, Mr. Deacon?

A. As our car passed by here, going toward Carteret, there was a man standing here. He had a club in one hand and a revolver in the other. He had just apparently driven some men up this track on the run, and a number of men had gathered behind this station shelter here, in back of it, and he noticed that, and apparently called to

them to come out. They came out and he made them go up this track, on up in that direction.

Q. Was the throwing of these missiles before or after the shooting by the deputies?

A. After.

Q. And was it while the train was proceeding from the station towards Carteret?

A. Both before and after it was proceeding.

Q. Was the shooting going on while these missiles were being thrown?

A. I think not.

Q. Did you hear any shooting beyond the track?

A. I have no recollection of any shooting after the train started to proceed toward Carteret.

Q. And you were on which car?

A. Second car.

Q. And how many cars were on the train that morning?

A. I don't know. I think five.

Q. You said that you saw the strikers throwing their clubs away. What was the nature of those clubs or sticks that you speak of?

A. Why, they were sticks that apparently had been collected, and had a handle whittled on them so they would not hurt the hand, to be used as a club.

Q. How large were they?

A. Oh, well; they were various lengths. Most of them I would say were about that long (indicating).

MR. McCARTER: That would be how long, Mr. Deacon. You know that does not get on the record.

A. 24 to 30 inches, or something like that. Probably not as long as 30.

Q. How far were those men who had the clubs away from you when you observed them?

A. I would say the farthest one was not farther than the door of the court room.

Q. You were so close to them that you could notice that the handles were all whittled off?

A. I noticed that on the clubs as they lay on the ground.

Q. You noticed the clubs afterward?

A. They slung them down on the ground, and the clubs lay there.

Q. How close to the train did you see those clubs lying on the ground?

A. Between here and the door of the court room, that distance.

Q. How many clubs did you see?

A. I didn't count them.

Q. How many about?

A. Oh, I suppose all together there were 15 or 20, or 30, scattered all around in various directions.

Q. A mere guess on your part, isn't it?

A. The exact number, yes. As I say, I had at that time no reason for counting them.

By THE COURT:

Q. This train stopped some distance before it reached the station of Williams & Clark, as I understand it; it was stopped by somebody?

A. I don't think the train actually came to a complete standstill. It came down to slow motion, so that it was easy for anyone to step on or step off, but I do not think it was a complete stoppage.

Q. Where was the engine with reference to the station at Williams & Clark's when it did stop?

A. As near as I could tell, I could not see, your Honor, but as near as I could tell the pilot of the

locomotive would be just here in front of the cross tracks. Ordinarily it stops up here (indicating).

Q. It did not go past the station?

A. It did not stop at its usual place.

RE-DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Deacon, did you notice whether any body of the strikers got on the train as it slowed up that morning, whether anybody got aboard of it?

A. A lot of men got on the platform.

THE COURT: He said they got in, on your examination, and looked in the front windows. Now, why do you want to prove that again? He saw them looking in the windows.

MR. McCARTER: He wants to prove something else, if we are permitted to. He wants to prove a man remained on the train.

THE COURT: Answer that question.

Q. Did one of these men remain on the train?

A. When the firing started, one man who was right in front of the door, looking in, opened the door and slammed it, and dived into the corner and curled up in the corner by the seat and remained there until the train reached the Carteret station.

Q. Did he have anything with him when he got aboard of the train?

A. Nothing that I saw.

FRANCIS R. PYNE, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Pyne, where do you live?

A. Elizabeth.

Q. What is your business?

A. I am the refinery superintendent of the United States Metals Refining Company at Chrome.

Q. In order to reach that plant do you travel by the Central Railroad of New Jersey?

A. Yes, sir.

Q. The usual train is one that comes to that place about eight o'clock, or a little after?

A. Yes, sir; a little after eight.

Q. Were you on that train on the morning of January 19th?

A. Yes, sir.

Q. What side of the train were you sitting on?

A. Left hand side, that is, facing the engine.

Q. Directing your attention to the time that this train reached the vicinity of the Williams & Clark station, tell us whether anything unusual occurred that morning?

A. Well, just as the train crossed the Rahway River, coming down towards the Consumer's plant—

Q. Is that north of the Williams & Clark?

A. Yes, north of the Williams & Clark.

Q. How far about?

A. Oh, I suppose 1,500 feet, more or less.

Q. All right.

A. There is a curve there, and as we came around the curve I saw a large crowd of men around the Williams & Clark station, and there were men scattered along the track on both sides, and as we drew nearer we could see obstructions on the track, just this side of the cross line, which goes over and joins the main line at East Rahway. And the train—or the engineer was whistling, and the train slowed down, and as it slowed down the men alongside of the track climbed on board of the cars and started to look in the windows to see who was in there. And the train stopped just before that cross line, and at that time my attention was directed to the deputies marching out of the plant. They came out along the road, down by the fence, until they reached that cross road, that cross branch, and then they went around a lot of scale parts which were in a vacant space there, and about I should say, about one-third of them had gotten around when I heard shooting from the front part of the train. Then the deputies, some of them had—

Q. One moment. Were the deputies anywhere near the front part of the train?

A. They were quite a little way from the track at that time.

Q. Well, did the shooting that you heard at that time come from the deputies?

A. No, sir; it did not.

Q. And were your eyes fastened on the deputies at that time?

A. My eyes were fastened on the deputies all the time; yes, sir.

Q. Did you see any of them shoot at that time?

A. No, sir.

Q. Proceed then.

A. And as the shots were fired from the front

part of the train, those of the deputies who had riot guns fired up in the air. Some of those who had revolvers shot into the ground, and then they charged, and as they charged I went over to the other side of the train to see what was happening on the right hand side. A large number of the strikers ran up the hill towards Carteret, and some of them ran up the railroad track towards East Rahway, and others ran alongside of the train.

Q. How many of the strikers did you see about the station that morning?

A. Oh, I should say there were over two hundred of them.

Q. Were they quite orderly, or boisterous?

A. Well, I did not see the ones at the station, but the ones along the track—they were talking and seemed quite excited.

Q. Did they have anything in their hands?

A. Yes, sir; they had clubs and stones, pieces of iron pipe, chunks of iron, scrap iron.

Q. Did you see any particular person shoot at anyone?

A. No, sir.

Q. Did you see any of these so-called deputies shoot into the crowd?

A. Yes, sir; I saw two of them shoot into the ground.

Q. No, I say into the crowd?

A. Why, one man was chasing some of the ground, who were they chasing?

A. No. Into the ground.

Q. Those that you saw shooting into the strikers who were running alongside of the train, and another one was chasing those who were going up the spur over at East Rahway.

Q. You have no connection with the Liebig Works, have you?

A. No, sir.
Q. Or the Williams & Clark?
A. No, sir.
Q. Or the American Agricultural Company?
A. No, sir.

MR. STRICKER: You may cross-examine.

CROSS EXAMINATION:

By MR. COAN:

Q. What company are you connected with?

A. United States Metals Refining Company.

Q. That is the same company of which Mr. Deacon on the train that morning?

A. Yes, sir.

Q. In the same seat with him?

A. Yes, sir.

Q. And which of you was next to the window?

A. Mr. Deacon.

Q. Did Deacon call your attention to the crowd of men out at the station?

A. No, sir.

Q. You saw them before he did?

A. Well, I think we both saw them about the same time.

Q. How many did you say there were down there?

A. I should say over two hundred.

Q. Where were the deputies when you first saw them?

A. When I first saw them they were coming alongside of the fence by the Williams & Clark plant.

Q. Had they turned the corner yet?

A. What corner do you mean?

Q. Corner of the fence?

A. Yes, sir; they were marching down that road.

Q. How many of them were there?

A. Oh, I should say about thirty.

Q. Did you notice whether there were any other men in that vicinity?

A. I didn't notice anybody except that crowd.

Q. And they came down to the scale parts and turned across the track?

A. Yes, sir.

Q. That track leads directly over to the main track near the station, doesn't it?

A. Yes, sir. Crosses it.

Q. And it was in that vicinity that you saw the strikers congregated?

A. Yes, sir.

Q. What did you see in the hands of the deputies?

A. Clubs and revolvers and there were several riot guns.

Q. How many riot guns?

A. Well, there were several. Two or three; I didn't see any more than that.

Q. How many revolvers?

A. Well, I didn't count them. Most of them I saw had revolvers.

Q. Those that had revolvers were the same ones that had the clubs, weren't they?

A. Yes, sir.

Q. And did those who had the riot guns have clubs too?

A. Well, I couldn't say as to that, because they were too far away to see.

Q. You say the shots that you heard first, how many were there?

A. Four or five.

Q. And they came from the front of the train, you say?

A. Came from the front part of the train.

Q. Well, you would not undertake to say what place they did come from?

A. No, sir.

Q. Except by judging from the sound you thought they came from the front of the train?

A. Yes, sir.

Q. That is what you mean?

A. Yes, sir.

Q. Where were those strikers that you saw with the cinders and iron pipe and pieces of iron, and so forth?

A. They were along the track.

Q. Did you see them before or after the shooting from the deputies?

A. Why, before

Q. Which side of the track were they on?

A. Both.

Q. Well, you were not able to see them on the right hand side of the track before the shooting, were you?

A. I saw them as they climbed on the cars.

Q. How many climbed on the cars?

A. Four or five got on the platform between the first and second car.

Q. You were in the second car?

A. Yes, sir.

Q. Those were the only ones you saw?

A. They were the only ones I saw climbing on the cars.

Q. And did every one of those four or five that you saw climb on the car have sticks in their hands?

A. No. I would say three-quarters of them had.

Q. Three-quarters of those three or four that climbed on the car?

A. Yes, sir.

Q. How many of those that climbed on the car had iron pipes in their hands?

A. There was one.

Q. That makes up your four quarters, doesn't

it? How many stones and pieces or chunks of iron there?

A. Well, I won't say that any of those who climbed on the train had stones.

Q. Where did you see those who had the chunks of iron in their hands?

A. Running along the track.

Q. On which side?

A. On the left hand—on the right hand side of the train.

Q. That was after the shooting, wasn't it?

A. That was after the shooting.

Q. After the deputies had started to shoot?

A. Yes, sir.

Q. How big were those chunks of iron?

A. Well, they were, oh, I should say they weighed three or four pounds.

Q. How big were they, is the question?

A. Well, about as big as you could hold in your hand comfortably. They would fill up your hand.

Q. And how big were the other missiles that you saw?

A. Well, I saw a couple of baseball bats.

Q. How many baseball bats did you see?

A. I saw two baseball bats.

Q. Were they full baseball bats, or only parts of baseball bats?

A. Well, they looked to me like, well, one of them I noticed particularly was an old one. Looked like it had been an old one thrown away somewhere.

Q. How many of the strikers did you see with sticks of any kind?

A. Well, I didn't count them. There must have been, oh, I should say 15 or 20 of them came up along the track and going up towards—

Q. What did they do with those sticks?

A. Some of them threw them away and the others kept them.

Q. After the shooting that was?

A. Yes, sir.

Q. But while the shooting was going on—

A. Well, it was while the shooting was going on.

Q. While the shooting was going on?

A. Yes.

Q. Where were the deputies while the shooting was going on?

A. Well, I didn't see the deputies after they charged the crowd until they got on the other side of the train, and then as I say, I saw one coming along the side of the train, and the others going up the East Rahway spur.

Q. You did see some of the deputies on the right hand side of the train?

A. Yes, sir.

Q. How many did you see around there?

A. On the right hand side of the train?

Q. Yes.

A. Well, there were at first two, and as the train started to move again, and went by the Williams & Clark station, I suppose there were a dozen men at the station, I presume they were the deputies.

Q. Now they continued shooting all that time, didn't they?

A. No, sir.

Q. Well, they continued shooting after you saw them in front, only on the right hand side?

A. There wasn't any shooting going on as we passed the station.

Q. I say they continued shooting after they passed the station in front on the right hand side?

A. Yes, sir.

Q. How long did the shooting continue?

A. I wouldn't like to say.

Q. Give us your estimate of it?

A. Several minutes, I should say.

Q. By several minutes, do you mean as many as ten?

A. I don't think so.

Q. As many as eight?

A. I should say it was around five.

Q. And during that five minutes did the shooting continue?

A. Fairly so.

Q. How many shots would you say were fired in that five minutes?

A. I couldn't estimate.

Q. Will you say there were as many as 2,000?

A. I couldn't state. There were over five hundred.

Q. Did I understand you to say that the deputies when they fired—just fired in the air?

A. Yes, sir.

Q. Those who had revolvers?

A. Those who had riot guns.

Q. And those who had revolvers all fired in the ground?

A. Yes, sir. All fired in the ground.

Q. You are positive of that; all who had guns fired in the air, and they who had revolvers fired in the ground?

A. That is all I saw shooting.

Q. You saw all of them shooting, didn't you?

A. No, sir; I can't say that I did.

Q. How many did you see shooting?

A. I didn't count them.

Q. How many?

A. I didn't notice close—I saw the first and second ranks.

Q. You are only talking about the first and second ranks. You don't know where they all shot?

A. No, sir.

Q. You don't know as a matter of fact, the number of strikers who were shot there that day?

A. Yes, sir.

Q. And you see them shot there as the train pulled out?

A. I didn't see anybody shot there.

Q. You didn't see anybody shot there?

A. No, sir.

Q. Where were you sitting as the train pulled out?

A. Right hand side of the train.

Q. Didn't you see men crawling through the water with blood on their—

A. I saw men crawling through water, but not with blood on them.

Q. Didn't you see a man with his trousers rolled up and his foot on a tree stump with the blood running down his leg?

A. Yes, sir; I saw that. You are talking about when the firing took place.

Q. You distinguish them between the actual moment of the shooting and the moment after.

A. Certainly.

Q. How many did you see after?

A. Two.

Q. Where were they?

A. Running up the hill.

Q. You didn't see anybody lying on the ground?

A. No, sir.

Q. You didn't see anybody being carried away?

A. No, sir.

Q. As you went up toward the Carteret station?

A. No, sir.

ISRAEL LIPSHITZ, a witness produced as a witness on behalf of Defendant, and being duly sworn according to law, upon oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Where do you live, sir?

A. 221 Spencer street, Elizabeth.

Q. Where are you employed?

A. At the copper works in Chrome, N. J.

Q. The United States Metal Refining Company?

A. Yes, sir.

Q. And do you in the morning take the train which leaves there about 8 a. m. or a little after?

A. Yes, sir.

Q. Were you on that train on the morning of January 19th?

A. Yes, sir.

Q. Directing your attention to the time when the train reached the vicinity of the Williams & Clark station, will you kindly tell us what happened?

A. Well, as the train pulled into the station we could see advancing the deputies on one side of the train, and as I was sitting on the right side coming down, I could see the strikers on the other side; as we neared the plant we saw the deputies run toward the train as a sort of a protection.

MR. COAN: I move to strike out that conclusion.

THE COURT: You do not think that is proper, do you. Strike out the last few words. Just tell what you saw, not your notions.

A. We saw the deputies; we also saw the strikers on the left hand side, and we heard shots fired. I didn't see anybody hit. I didn't see anybody fall or anything; only I saw a lot of strikers running away.

Q. Did you have any opportunity of seeing any of the strikers before the train stopped?

A. No, sir.

Q. As they were running away, did you see them have anything?

A. Some had clubs in their hands.

Q. Did you see any of them get aboard the train?

A. One was in our train, and he was chased off by the conductor.

CROSS EXAMINATION:

By MR. COAN:

Q. Where was this fellow chased off?

A. As the train started the conductor came rushing through the train to see if anybody was on board who didn't belong there; he rushed him off, and I think kicked him off, but I didn't see him kick him off.

THE COURT: What did you say he kicked him off for?

A. Somebody told me he kicked him off.

THE COURT: Strike that out. You are an intelligent man, why can't you obey the instructions. I told you to tell only what you saw, not what somebody else tells you.

Q. How much of what you have testified here to is what somebody else told you?

A. None, only this last statement.

Q. That is the only one?

A. Yes, sir.

Q. How many deputies did you see?

A. I should think I saw about eighteen or twenty.

Q. And what did you see in their hands?

A. Some had revolvers and some had clubs.

Q. And some had guns?

A. No, sir; I didn't see any guns.

Q. You didn't see any guns?

A. No, sir.

Q. How many revolvers did you see?

A. Well, I saw about ten revolvers.

Q. Now where were the deputies when you saw the revolvers?

A. They were up close to the train.

Q. And the men who had revolvers also had clubs, that is right, isn't it?
A. No, sir.
Q. What did those you saw with clubs have?
A. Just clubs.
Q. Only clubs?
A. Yes, sir.
Q. What hand did they have them in?
A. The right hand.
Q. Have anything in the left hand?
A. I didn't notice anything.
Q. Do you know where the left hand was?
A. Yes, sir.
Q. Where?
A. On their left hand side.
Q. It didn't happen to be in the left hand pocket, or anything?
A. No, sir.
Q. Hanging down there by their sides?
A. Lifted in the air.
Q. Left hand was lifted in the air?
A. Yes, sir.
Q. What doing?
A. Nothing, just holding it up as they ran.
Q. Holding a club on the right side, the club down here, and lifted the left hand this way?
A. Not that way.
Q. What way?
A. Just up some distance from his body.
Q. Show us yourself?
A. Like this. They had their club in their hand like that, and they were holding the other hand this way (running).
Q. And running?
A. Yes, sir.
Q. How many were in that condition?
A. I couldn't say how many were there; I

saw them as they march from the plant, but I couldn't judge how many were in that position.

Q. Where were they at the time you are describing they had their arm up?

A. When coming towards the train.

Q. Which side of the train were you at?

A. On the left side; I was on the right coming down, and when I heard the shots I jumped over to the left side.

Q. You heard the shots on the left side?

A. Yes, sir.

Q. And you came over to see where the shooting was?

A. Yes, sir.

Q. And you saw those deputies shooting?

A. Some of them.

Q. See them have guns, revolvers?

A. Only those that had revolvers; didn't see any guns.

Q. Only those that had revolvers; you said you didn't see any guns; all right. You say you saw the strikers have clubs?

A. Yes, sir.

Q. What kind of clubs?

A. Some with broomsticks, others with pieces of sticks.

Q. Well, about how far were they away?

A. Oh, they were about two feet I should judge.

Q. About two feet?

A. Yes, sir.

Q. How many clubs did you see with the strikers?

A. Ten or twelve.

Q. Ten or twelve?

A. Yes, sir.

Q. And you saw them throw them away while the shooting was going on?

A. No, sir.

Q. Didn't I understand you to say you saw them throw them away?

A. No, sir.

Q. Where was the strikers when you saw the clubs with them?

A. The train was pulling out of the station, and as we passed them we saw them with clubs. They were doing nothing.

Q. That was after the shooting?

A. Yes, sir.

Q. And how long did this shooting continue?

A. I should judge from the time the train was there about five minutes.

Q. And the shooting was continued during that five minutes?

A. More or less.

Q. Tell us what kind of clubs you saw the deputies have?

A. They had those regular police clubs.

Q. Night sticks?

A. Yes, sir.

Q. About thirty inches long?

A. About that, yes, sir.

MR. COAN: That is all.

CHARLES CROUSE, a witness produced in behalf of the defense, being duly sworn, according to law, upon his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Crouse, where do you live?

A. My home address is 2,000 Valentine avenue, New York. I am in Boston at present, working there.

Q. Talk louder.

A. I say my present address is 2,000 Valentine avenue, New York. My business address is North Weymouth, Mass., and I think it will be in the future.

Q. Where were you on the morning of January 19th?

A. I was on the train coming from Jersey City.

Q. And is that the train which reaches Williams & Clark station around eight o'clock?

A. Yes, sir, that is called the 8 o'clock train.

Q. Who were you employed by at that time?

A. By the American Agricultural Chemical Company, Liebig Works.

Q. You are still employed by the same company?

A. By the same company, but the Bradley Works.

Q. Now as that train approached that station, did anything occur, anything unusual?

A. Why yes, the train stopped before it came to the station.

Q. And do you know why it stopped?

A. Not especially, but I heard why.

Q. Oh, no.

A. No, I don't know why it stopped.

Q. Of your own knowledge you don't know why it stopped?

A. No, sir.

Q. Where did it stop?

A. It stopped 100 feet from the station, from the usual stopping place.

Q. North or south; towards New York?

A. Towards New York.

Q. Was there anybody at the station?

A. We didn't get to the station yet.

Q. Was there anybody there near the station?

A. I didn't see anybody.

Q. Did you see anything occur there that morning?

A. Yes, sir, as the train stopped, there was four or five strikers got on the train and sat down.

Q. Did they have anything in their hands?

A. They had pick axe handles.

Q. Then what happened?

A. Then as the train started moving I saw three strikers in the vicinity of the station have revolvers in their hand.

Q. What did they do with the revolvers?

A. They shot.

Q. Shot at who?

A. In the direction of Williams & Clark station.

Q. Well, what happened after these strikers shot in the direction of Williams & Clark station?

A. Well, I moved over to the other side.

Q. Which side?

A. I was on the right hand side of the train up to the window, and I moved to the left hand side to the same seat, up against the arm.

Q. And did you see anything then?

A. No, sir. I was afraid of being shot myself, so I moved back from the window to the seat; as the train moved I could see these men running across the field .

Q. Which side?

A. On the right side of the train opposite the factory.

Q. And then you saw the men running. Did you see anything else?

A. I think several of them fell. One man fell wading through the water.

CROSS EXAMINATION:

By MR. COAN:

Q. By whom are you employed now?

A. The American Agricultural Chemical Company.

Q. On January last you were a chemist at the Liebig Works?

A. Yes, sir.

Q. Down at Roosevelt?

A. Yes, sir.

Q. That is one of the plants where the strike was on, wasn't it?

A. Yes, sir.

Q. You were seated on the right hand side that day as you came into the station?

A. Yes, sir.

Q. Now these Italians you saw shooting, that was after the train started again? After it had stopped, wasn't it?

A. It had stopped, yes. Just as soon as the train started I saw these men.

Q. It made only one stop, that is right, isn't it?

A. That is all I remember.

Q. And that was at a point toward Elizabethport, from the usual stopping place?

A. Yes, sir.

Q. And just as soon as the train started again you saw these Italians on the right hand side shooting under the train?

A. The train had moved on a little ways.

Q. After it had started to move?

A. Yes, sir.

Q. As a matter of fact, had the deputies been shooting before your train started?

A. I had heard no shots before that.
Q. You had heard no shots before that?
A. No.
Q. Had you seen that deputy before that?
A. No, sir. I wasn't in a position to see the deputies at all.
Q. You didn't see the deputies at all?
A. No, sir.
Q. How many times will you say that these men fired under the train?
A. Well, I saw them fire once, and then move over toward the other side of the seat, so I couldn't see down past the window sill.
Q. Then so far as you know, they fired only once?
A. That is all I saw.
Q. Did you see all three of them fire?
A. They lifted their arms in that manner and shot, three of them, nearly at the same time.
Q. The report, simultaneously?
A. Yes, sir, pretty near.
Q. You heard the report?
A. Yes, sir.
Q. With relation to the small station where were those three men?
A. They were towards New York.
Q. Nearest to New York?
A. Yes, sir.
Q. How far away from the station were they?
A. I didn't see the station at the same time, but I could see a look of it as we passed a couple of seconds later.
Q. You were familiar with the road, weren't you?
A. In a way I was.
Q. Going down there every morning?
A. Kind of monotonous in a way.

Q. Can't you tell us how far those men were from the station?

A. No, sir.

Q. How far had the train gone?

A. I couldn't tell you that.

Q. Before the shooting?

A. I couldn't tell you that, how far it had gone.

Q. You saw where it had stopped?

A. I thought about 100 feet from the station.

Q. How many feet from the station were those Italians standing who did the shooting?

A. I couldn't tell.

Q. You can tell us how far the train stopped from the station?

A. Yes, I can tell you that.

Q. Why can't you tell us where they were?

A. I can't be exact about that.

Q. You can be just as exact as you are about the distance the train stopped?

A. I can tell you about.

Q. Well, now, tell me about?

A. Well, I should judge about 25 feet.

Q. Away from the station?

A. About that.

Q. So that in your judgment the train had proceeded about 75 feet when they started to shoot?

A. Yes, sir, about that.

Q. And the train was moving when they shot?

A. Yes, sir.

Q. Of course you can't tell whether they shot into the ground or the air, or any other way, can you?

A. No, sir, I couldn't.

Q. You saw several of the strikers wounded there, didn't you?

A. Yes, sir, I saw three.
Q. How many?
A. I saw three.

MR. COAN: That is all.

THOMAS HINEY, a witness produced on behalf of defendants, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. You are an officer of the Central Railroad of New Jersey?

A. Yes, sir.

Q. And on the morning of January 19th, were you in the vicinity of the Williams & Clark plant?

A. I was, sir.

Q. At what time?

A. At about nine o'clock, a few minutes after nine.

Q. That was—how did you reach there?

A. By train, what we call the nine o'clock train

Q. And that train is the train following the eight o'clock train?

A. That is the same train that was down there at eight o'clock.

Q. Did you reach the Williams & Clark station?

A. Yes, sir.

Q. When you reached that station, was there anybody there?

A. Yes, sir.

Q. Who?

A. There were two policemen there—off towards the Williams & Clark works, and a group of men about one hundred feet or so out in the field from the station, and there was another crowd of men up towards the freight house.

Q. Was there anybody upon that station?

A. That is near the station proper.

Q. Well, near the station?

A. Yes, up the track from the station within about 150 feet.

Q. Well, now, how many persons were there about that station?

A. Why in one group I should judge there was from, I should judge in the neighborhood of one hundred.

Q. Yes.

A. And there was some scattered around.

Q. And what were those people doing?

A. Why they were standing there, talking together.

Q. And did they do anything when the train arrived?

A. Why no.

Q. Did you have any trouble with them?

A. No.

MR. COAN: I object.

THE COURT: He has answered now. It is not competent. Proceed.

MR. STRICKER: That is all.

MR. COAN: No questions.

THOMAS REVOLINSKI, a witness produced on behalf of the defendants, being duly sworn, according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

MR. WESCOTT: I think I have seen this witness sitting here in court.

MR. STRICKER: He has sat there in court, Mr. Attorney General, at the time, if the Court please, when I wanted to lay the foundation for a contradiction and had him here just for the moment to face the witness; he went right out, sir.

MR. WESCOTT: I am told he was here all day.

MR. STRICKER: I don't care what you were told.

MR. WESCOTT: I object to this witness being examined, if your Honor please.

THE COURT: I can't see how I can refuse to let the witness testify. If this man has been sitting here contrary to the orders of the court, why—

MR. WESCOTT: He ought to be committed for contempt.

THE COURT: If he did this thing, it was a very improper thing to do. I don't know these witnesses. At the request of the defendant they were all excluded.

Q. You are a constable of this county, Mr. Revolinski?

A. Yes, sir.

Q. And do you know—were you in and about

the Williams & Clark plant, the Liebig plant, about the 19th of January?

A. I was.

Q. And under whose direction were you there?

A. Sheriff Houghton.

Q. Do you recall the morning of the shooting at Williams & Clark?

A. Yes.

Q. State whether or not shortly after the shooting, you saw Officer Dowling?

A. The morning after the shooting?

Q. On the morning, or the morning after, or any time afterwards?

A. The morning after the shooting.

Q. Did you speak with him?

A. Well, I did.

Q. Did he say anything about the sheriff?

MR. COAN: I object.

THE COURT: How is that competent?

Q. Well, did he say the sheriff was a son of a bitch?

A. He did.

MR. COAN: I object to that.

MR. STRICKER: The foundation was laid by Mr. Dowling, Officer Dowling.

MR. WESCOTT: Just simply collateral and unimportant. What has it got to do with this case.

THE COURT: I will allow it. Proceed.

A. Yes, he called him a son of a bitch and other names.

Q. Do you know Edward Conlon, a witness who testified in this case?

MR. WESCOTT: I move to strike out the last part of the answer.

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THE COURT: Strike out that last part.

A. I do.

Q. After this shooting did you have any conversation with Edward Conlon?

A. I did.

Q. What did he say to you?

MR. WESCOTT: I object.

THE COURT: That is not the way to contradict the witness.

MR. STRICKER: I understand the rule. You can contradict them both ways.

THE COURT: The only way you should contradict the witness is to ask him if he said so and so; he said he didn't; you must then ask this witness the same question exactly, because that is all the man answered to.

Q. State whether or not Eddie Conlon told you subsequent to January 19th, or on January 19th, that he was not at the plant when the shooting took place, but that he was up getting the mail?

A. He did.

Q. What is the answer to that?

A. He did.

Q. And where was it that he told you that?

A. At the office of Williams & Clark.

Q. And when was it that he told you that?

A. On the morning of January 19th.

MR. STRICKER: Cross examine.

MR COAN: No questions.

By the COURT:

Q. You say you are an officer of the sheriff of the county?

A. Yes, sir; he had me down there to serve papers.

THE COURT: That is all.

ROBERT B. MOORE, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Moore, by whom are you employed?

A. The American Agricultural Chemical Company.

Q. At which works?

A. The Liebig works.

MR. McCARTER:

I understand from your Honor's ruling I am prevented from asking this witness anything that occurred prior to the morning of the 19th?

THE COURT: I adhere to my ruling already made, that is all.

Q. In what capacity are you employed by the Liebig Works?

A. I am superintendent of one of the departments there?

Q. What train did you take the morning of the 19th?

A. The train that left Eliazbeth avenue 7.44.

Q. As you approached the Williams & Clark plant, was your attention directed to anything?

A. Yes, sir.

Q. Just tell us in your own way what occurred?

A. The train came to a stop rather further north than usual, and looking out the window we saw on either side of the track a gathering of strikers, and presently we saw—

THE COURT: Why do you say "we"?

A. I will say I. I saw some, I heard somebody

in the train say, "There come the deputies," and I looked out of the window, out the east side of the train, and I saw the deputies come out of the Williams & Clark gate, and then almost immediately I heard a shot from a point ahead of me, near the train. As far as I could see the deputies were not armed other than with clubs, and they advanced, and the strikers jumped up on the platform of the car on which I was, and they peered into the end windows, and then the deputies advanced on them and chased them. And by that time the trouble was on the far side of the train and I jumped up off my seat and crossed over and looked out the far side. There I saw these deputies chase these men, and I saw only one deputy shoot, and he shot into the ground; he was just coming right under the window where I was at that time, and I looked out and saw a man running this way on my right, and the deputy chasing him, and the deputy had a clubs in his left hand, and a revolver in his right hand, and he was shooting into the ground under the car.

Q. Was he right or left of the track?

A. West side of the track. Right hand side in the direction the train was pointed.

Q. Now you spoke of having heard them shooting; the first shooting you heard, go back to that occurrence. At that time your attention had been directed to the deputies by some one saying, "There come the deputies"?

A. Yes, sir.

Q. Now, where were those deputies about at the time your attention was called to them?

A. They were scattered; some 20 or 30 feet out side of the track along the fence of Williams & Clark there, and others just coming down the track.

Q. Now the shots that you then heard, did they come from the body of the deputies?

A. No, sir.

MR. COAN: I understood the witness to say one shot.

Q. Was it more than one shot, or shots?

A. Shots.

MR. McCARTER: That is what I heard, I thought, Mr. Coan.

Q. How far from the train across the ground, did you think or judge the deputies were—the nearest deputy at the time that you heard these shots in front of the train?

A. Why —

Q. Take the length of this court room?

A. Well, it was two and a half or three times the length of this court room, this way.

Q. Will you tell this jury where—from what direction—the shot that you heard first—the shot came?

A. I was in the second coach of the train, and the shot came from a point there in the front, so I guess it was directly ahead of me; I couldn't say where they came from but from that general direction.

Q. Did you see any wounded strikers?

A. Yes, sir.

Q. Where?

A. In the field to the west of the track I saw a man put his foot up on a stump and he pulled up his trousers leg and he was wounded in that leg. I also saw a man wallowing through the ditch through the Y between the tracks. I don't know whether he was wounded or not; he looked as though he might be.

Q. What was the location of the deputies, I mean the strikers—in the crowd that you saw there when the train came to a stop?

A. Why, they were near the station.

Q. Yes.

A. On either side of the track.

MR. McCARTER: Cross examine.

CROSS EXAMINATION:

By MR. COAN:

Q. You could see both sides of the track from where you were seated, of course?

A. No, sir.

Q. Then why did you tell us they were on both sides of the track when you couldn't see them?

A. Because I got up and looked towards the other side and saw them.

Q. Then you saw them first on one side and then on the other?

A. Yes, sir.

Q. And as far as you know they may have done what you did, gone from one side to the other?

A. Possibly they may have done so.

Q. You were quite alarmed when you saw the great number of strikers around there?

MR. McCARTER: I don't think there is any occasion for alarm or excitement.

Q. (Repeated).

A. I can't say I was particularly alarmed.

Q. You were entirely cool and collected there, weren't you?

A. Well, I was excited and interested in seeing what there was to be seen as every passenger in the car.

Q. And you were alarmed because of the fact you knew they were strikers and they knew that you were a superior down at the Liebig plant?

A. I was a superior at the Liebig plant.

Q. And I say the presence of this large number of strikers caused you to become alarmed?

A. I can't say that I as particularly alarmed.

Q. Now, you did not see the people that fired

this shot, or those shots?

A. No, sir, I did not.

Q. Down in front of the train?

A. I did not.

Q. And you are simply judgment of the loca-

A. From the report, yes, sir.

Q. You did see some wounded strikers?

10 tion of the shots from the report?

A. Yes, sir.

Q. Did you see any wounded deputies?

A. No, sir, I didn't see any wounded deputies.

Q. Now, so far as you could see the deputies were not armed, were they?

A. Except one man.

Q. Except one man. Where did you see the deputies come out?

A. Where?

20 Q. Yes.

A. Why, they came out of the track which runs into the Williams & Clark yard furthest south.

Q. Do you mean to say that they came out through that or that is where you saw them first?

A. That is where I first saw them.

Q. Well, were they outside when you first saw them?

A. Yes, they were outside when I first saw them.

30 Q. What did they have in their hands?

A. They had clubs, as far as I could see.

Q. You were able to see what they had, weren't you?

A. I was able to see anything that was visible there on that side of the track, yes, sir.

Q. And yet you saw only clubs in their hands?

A. That is all I saw in their hands; yes, sir.

Q. Did you see any of them have guns?

40 A. I didn't see any of them have guns.

Q. Did you see any of them have revolvers?
A. Not at that time. I did afterwards.
Q You saw one man with a revolver afterwards?
A. I did, yes, sir.
Q. And that is all the revolvers you saw at all that day in anybody's hands?
A. At all that day in anybody's hands; yes, sir.
Q. Where were the deputies when you heard those shots?
A. As I have told you, they were over—the headmost of them were perhaps 15 or 20 feet outside of the corner of the break in the fence there.
Q. You mean that they were about 15 or 20 feet away from the fence?
A. Yes.
Q. When you heard those shots?
A. Yes.
Q. Tell me this, Mr. Moore. Did you hear any other shots there that morning?
A. Yes, sir, I heard other shots afterwards.
Q. Thousands of them, didn't you?
A No, I don't think I heard thousands.
Q. Well, hundreds?
A. I would not say that I heard hundreds.
Q. Didn't you hear a volley of shooting that lasted for five or six minutes?
A. No, sir.
Q. You didn't?
A. No, sir.
Q. That lasted three or four minutes?
A. No, sir.
Q. How long did it last?
A. Why, from one or two minutes, possibly.
Q. And a continuous firing during that time, wasn't it?
A. No, sir, it was not a continuous firing.

Q. Where were those shots coming from?

A. Why, they were coming from either side of the train, and ahead, and behind, where I was on the train.

Q. From all around the train?

A. From all around the train, yes, sir.

Q. Now, tell me, were there any windows broken in that train by the shots?

A. Not as far as I know.

Q. Did you see any of the bullets find lodgement in the train?

A. No, sir, I did not.

Q. Did you see anybody else shoot except this one person?

A. No, sir, I did not.

Q. What were you doing when they were shooting all around that train, on either side of it, and in front of it and behind it, that you didn't see the shooting?

A. Well, I was looking out the window. I was very much interested in what was going on, but it is a habit—

Q. Which side of the window were you looking off?

A. When the train pulled into the station I was looking out of the left hand side and as I have told you, I afterwards crossed over and looked out of the right hand side.

Q. While you were looking out of the window you saw only this one shot fired?

A. That is all I saw fired.

Q. Now, if this shooting that you heard was all around that train, how is it that you were not able to see?

A. Well, because I haven't but one pair of eyes and I was looking at other things at the time.

Q. What other things were you looking at?

A. I was very much interested in this one particular man, as I say, that was chasing the striker, and I followed him through the range of my vision. I saw him as he came along this way, and I followed him right underneath me here, and I went that way to him.

Q. He went right along the side of the train, didn't he?

A. He did, yes, sir.

Q. And your range of vision was very limited there, wasn't it?

A. Yes, I could see.

Q. This shooting that lasted for the couple of minutes that you speak of, do you think that was all around the train on both sides of it and in front of it and behind it?

A. I should think so, yes, sir.

Q. Who was doing that shooting?

A. I don't know. As I told you, I only saw one shot fired.

Q. Who fired that shot?

A. One of the deputies. A man, at least I assumed it to be a deputy. I don't know that he was.

Q. You were looking out the right hand side during the time of and after the shooting, weren't you?

A. Yes, sir.

Q. Didn't you as a matter of fact see the deputies scattering in all directions on that right hand side?

A. No, sir.

Q. You didn't see that at all?

A. No, sir.

MR. COAN: In that last question I meant to say strikers. I said deputies.

Q. Did you see the strikers scatter after that shooting?

A. The strikers?

Q. Yes.

A. Yes, sir.

MR. COAN: That is all.

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RE-DIRECT EXAMINATION:

By MR McCARTER:

Q. Counsel has asked you whether or not you were not somewhat alarmed. I ask you if anything had occurred with you before in the way calculated to make you alarmed at the strikers?

MR. WESCOTT: I object.

MR. McCARTER: I think you opened the door to that.

MR. WESCOTT: I object to it.

THE COURT: I do not understand the question put that way.

MR. McCARTER: I want to know if there had anything occurred to him individually that was calculated to alarm him, by the strikers?

MR. WESCOTT: On that occasion?

THE COURT: Ask that question.

MR. McCARTER: I did not say on that occasion.

MR. WESCOTT: I object to the question.

THE COURT: I will allow the question. This can be answered yes or no.

A. Yes.

Q. What was it?

MR. WESCOTT: I object.

THE COURT: If you say this is confined to this morning, or some other time?

MR. McCARTER: I imagine it was the day before.

THE COURT: Then I will overrule it.

MR. McCARTER: I offer to show that this witness was assaulted by a striker the day before, and roughly handled, and had to go seek police protection from one of these strikers.

THE COURT: Well, I overrule that.

Mr. McCarter prays exception. That is all.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

CHARLES A. DE RUSSY, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Are you employed at Liebig's?

A. Yes, sir.

Q. And were you last January, on the 19th?

A. Yes, sir.

Q. In what capacity?

A. I am foreman of the Digester Department.

Q. Had anything occurred by the strikers in front of the Liebig plant on the morning of the 19th?

A. Yes, sir.

Q. Please describe to the jury.

A. Why, the morning of the 19th the crowd congregated at the junction of the road and the railroad, where the Central Railroad runs across the main street, and there was a pile of cars on the track, and the strikers were, I suppose, about two or three hundred in number on the opposite side of the road from the Liebig Works, but it was on Liebig property. And the train came down from Carteret on the hill, come down in a winding shape and it came down very slowly, and when it got to within a point I suppose 50 yards from the ties it stopped altogether. The conductor got off and came on ahead. In the meantime the Sheriff had come down from the Liebig plant, from that direction, and had gone into the crowd, and the Chief of Police got off the train and came up there, and they met in the crowd. What they said I don't know.

Q. That is, what the Sheriff and the Chief said?

A. What the Sheriff and the Chieif said, but I understood afterwards—

Q. No. You cannot tell us about that. Did you hear the crowd yelling or hollering?

A. After the ties had been taken off and the train proceeded on its way to Chrome I did, and they went up the street.

Q. Well, now, when the train stopped, tell us what occurred with reference to the passengers on the train?

A. Why, they all stayed on.

Q. Did anybody get off?

A. Nobody but the Chief of Police.

Q. Did the strikers have anything in their hands?

A. They had clubs and stones.

Q. What did you hear them say after the train went on?

A. Why, the deputies were all outside of the fence in a line, and they jeered at them and told them to go to hell, and all that kind of business?

Q. Then where did the strikers go?

A. They all went up the street.

Q. Which direction?

A. Towards Chrome.

Q. Is that towards Williams & Clark's?

A. No, sir. It is the opposite direction.

Q. Did you see them later?

A. They later assembled on the corner about a couple of hundred yards from the scene of where the ties were on the track.

Q. Then where did they go?

A. Then they dispersed and went back towards Williams & Clark's in groups.

Q. Do you know whether notice was sent from

the Liebig's to the Williams & Clark of the fact that the crowd had gone toward the Williams & Clark station?

A. I understood Mr. Waring —

Q. No. Do you know yourself?

A. No, sir.

MR. McCARTER: I think that is all

CROSS EXAMINATION:

By MR. COAN:

Q. How many of the strikers had clubs, Mr. De Russy?

A. Oh, I suppose two or three dozen.

Q. Maybe a dozen?

A. Yes, more.

THE COURT: He said two or three dozen.

Q. How many were there in the crowd?

A. In the neighborhood of 250 or 300 maybe; quite a crowd.

Q. What kind of clubs did they have?

A. Broom handles and pick handles, any old thing they could pick up.

Q. Where were you?

THE COURT: Why is this important?

A. I stood possibly 120 feet from them.

MR. COAN: That is all.

JAMES M. FARLEY, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Farley, where do you live?
A. In Chrome.
Q. Are you employed at Liebig's?
A. Yes, sir.
Q. What capacity?
A. Electrician.
Q. How did you reach the plant on the 19th?
A. Walked down.
Q. From where?
A. My home.
Q. You live where?
A. In Chrome.
Q. Oh, you live in Chrome?
A. Yes, sir.
Q. So that you didn't come on the train?
A. No, sir.
Q. What time did you reach the Liebig plant on the morning of the 19th of January, about?
A. About half past six.
Q. Was there any crowd there?
A. Yes, sir, there was a crowd forming at that time.
Q. What?
A. There was a crowd forming at that time. They were coming from all directions.
Q. Where?
A. Coming towards our plant.
Q. And did you see anything on the track at Liebig's?
A. Well, at about when the seven o'clock train

come in, I saw the train stop. I didn't see anything because the crowd had formed around the track. I walked right in the factory.

Q. After the train went on what became of the crowd?

A. Why, the train stopped, as I say, before it reached our place.

Q. What occurred then?

A. After the train had gone, the crowd dispersed and went up towards the other factory.

Q. That is Williams & Clark's?

A. Yes, sir.

Q. Don't answer this question. On the 18th did you see any of the strikers fire at the deputies?

MR. COAN: I object.

THE COURT: Not this case? You mean the morning of the 18th?

MR. McCARTER: 18th.

THE COURT: I overrule that.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,

Judge.

Q. I will ask another question which you must not answer, Mr. Farley, until the Court rules on it. Did you have any trouble coming into the plant on the 18th, and when the seven o'clock train came in on the 18th, the day before the occurrence, immediately before this Court, did you know whether any man who arrived on the train at seven and eight o'clock were fired upon by strikers?

MR. COAN: I object.

THE COURT: I overrule that.

Mr. McCarter prays exception. That is all. Cross examine.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. COAN: No questions.

CHARLES A. OLIVER, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Oliver, you are a commissioner in the City of New Brunswick?

A. I am.

Q. One of the five Commissioners?

A. Yes, sir.

Q. And what is your business?

A. Detective business.

Q. How long have you been in the detective business?

A. About 45 years.

Q. 45 years. In business for yourself all that time?

A. Yes, sir.

Q. State whether or not you were retained by me to investigate this case?

A. I was.

Q. And state whether or not, being so retained, you interviewed a number of witnesses for me?

A. I did.

Q. And state whether or not you were retained to look up witnesses who could be found, and who saw what occurred at Williams & Clark station on the morning of the 19th?

A. Yes, sir.

Q. Did you in connection with your work call on one Edward Conlan, the witness who testified here yesterday?

A. I did.

Q. Did you see him?

A. I did.

Q. I show you here a paper marked Exhibit 2 Defendants, and ask you to say when you saw it?
A. I think it was the 3rd of March. Third day of March last.

MR. WESCOTT: Is that the statement that was here yesterday?

MR. STRICKER: Yes, sir. Could not be any other, could it?

MR. WESCOTT: Well, you had two there together.

MR. STRICKER: Yes, sir, and they are still here.

Q. Did you see that statement written?
A. I did.
Q. By whom?
A. Mr. Dwyer, a stenographer and typist.
Q. Who is Mr. Dwyer?
A. He is a stenographer and typwriter here in New Brunswick.
Q. Was he with you at the time?
A. He was.
Q. For the purpose of writing out the statement?
A. Yes, sir.
Q. Before that statement was signed, did you have a conversation with Mr. Conlan?
A. I did.
Q. What did you say to him?

MR. WESCOTT: I object.

THE COURT: How is that competent?

MR. STRICKER: I propose to show by this witness—

THE COURT: That is not the question, Mr. Stricker, what you propose to show. You may

contradict Mr. Conlan by laying the proper foundation. Now, so far as that written statement of his is concerned, that is another question, I am not dealing with that now, but you cannot give the conversation had with Mr. Conlan unless you call his attention to it first. That you know to be the rule, I think.

MR. STRICKER: If I may be permitted to suggest what I have in mind, I propose to show the manner and the circumstances and the conditions under which this statement was made.

THE COURT: Well, you may ask that, but that is not the question you asked.

MR. STRICKER: That is what I had in mind. Perhaps it was a little crude and inartistic.

Q. Before making that statement, did you tell Conlan who you were?

A. I did.

Q. What did you tell him?

MR. WESCOTT: I object.

THE COURT: I will allow that.

A. Told him I was a detective officer getting the facts in this trouble.

Q. For whom?

A. For the defence.

Q. Did you ask him any questions then?

A. I did.

Q. What did you ask him?

MR. WESCOTT: I object.

THE COURT: How is that competent.

MR. STRICKER: Well, I want to know this—I propose to show, if I may be permitted, just exactly how the question was asked, and I propose to show that there was absolutely no artifices.

THE COURT: You may show that, but you are now asking him to tell what he said to the witness. You have not offered that paper in evidence yet.

MR. STRICKER: It is marked for identification.

THE COURT: I know it is, but I do not know that you are ever going to offer it.

MR. McCARTER: Your Honor perhaps does not remember the situation. The witness, Eddie Conlan, denied that he was acquainted with the contents of that paper, and claimed that it had been altered and it was read to him differently from what he reads. Can't we show the facts?

THE COURT: That is not what this witness is being asked. He is being asked by Mr. Stricker to tell what his conversation with the witness was. About this paper, you may examine him, of course. I have not ruled on that.

Q. You say you told him you were a detective?

A. I did.

Q. Did you ask him whether he knew anything about this affair?

A. I did.

MR. WESCOTT: I object to that.

THE COURT: I will allow that to stand. Proceed.

Q. State whether or not the answer which he made is fully contained in this paper.

MR. WESCOTT: I object to that.

MR. McCARTER: Well, you won't let us show what he said—

MR. WESCOTT: You have no right to show what he said.

THE COURT: I cannot hear but one counsel at a time. What is your objection, Mr. Attorney General, and the ground of it.

MR. WESCOTT: The paper speaks for itself, doesn't it?

THE COURT: It does.

MR. WESCOTT: All they have to do is to offer the paper in evidence and they have it.

THE COURT: They have not done that yet.

MR. WESCOTT: They have no right to ask this witness if the statement on that paper was correct, have they?

THE COURT: I think I will overrule that question. You asked this witness certain questions, and you are introducing this, as I understand it, to affect his credibility. Now, you did not offer the paper in evidence so far.

MR. STRICKER: I promise to offer it, your Honor.

THE COURT: And now you are trying to have this witness relate a conversation had with Conlan about which he has not been asked.

MR. WESCOTT: That is true.

THE COURT: Now, that is not fair to Conlan. You only asked him about this paper. The paper speaks for itself so far as that goes. He admitted he signed it. And you may ask this witness the circumstances under which he signed it.

Q. Will you kindly state the circumstances under which this paper was signed?

A. But not give any conversation?

Q. Yes. Give the conversations?

MR. WESCOTT: No, I object.

THE COURT: No.

MR. STRICKER: Well, he cannot state the circumstances?

THE COURT: Oh, I think he can if he wants to.

MR. STRICKER: All right.

A. Well, I called at the office of the Liebig plant where this boy was employed and requested somebody about there to send the boy in and he came in.

By THE COURT:

Q. Did you have any conversation with him about this matter?

A. I did.

Q. Did you reduce it to writing?

A. Well, the gentleman who was with me reduced it to writing.

Q. And that paper marked for identification which you have in your hand contains all that he said?

A. Yes, sir, all that he said.

THE COURT: Proceed.

By MR. STRICKER:

Q. Was the paper read to him before he signed it?

A. Certainly, by this gentleman here, who signed it.

Q. And was it read in your presence?

A. Yes, it was.

Q. And was it after that that Conlan signed it?

A. Certainly, right there at that moment, yes. Immediately after it was read.

Q. At what time was that taken?

A. Liebig's. If I am not mistaken it was the Liebig plant.

MR. STRICKER: Cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. When did this occur?

A. The paper is dated the 3rd day of March last.

Q. Did it occur on the 3rd day of March?

A. No question about it, sir.

Q. How?

A. No question about it.

Q. Well, did it?

A. Why, yes.

Q. Where?

A. In the Liebig office.

Q. What time of the day?

A. I can't tell you. Some time I think—

Q. Give us your best judgment?

A. Some time before noon, I think, although I had a number of places that day that I can't fix the hour.

Q. Who was present?

A. Nobody but the stenographer, this young man and myself, until the Notary was called.

Q. Was there a stenographer there?

A. There was.

Q. Who was he?

A. A young man named Dwyer.

Q. Do I understand that there were three there then besides Conlan?

A. No, sir; two.

Q. Two besides Conlan, you and the stenographer?

A. No, sir.

Q. You have got me mixed.

A. That might be.

Q. You were there; that is one?

A. Yes.
Q. Conlan was there, wasn't he; that is two?
A. Two, yes.
Q. The stenographer was there, wasn't he; that is three?
A. Yes.
Q. Was there anybody else?
A. No.
Q. Did the stenographer do the writing?
A. He did.
Q. And at first he took down everything stenographically, didn't he?
A. No, sir.
Q. What did he take down stenographically?
A. If I can give the conversation I can explain that.

THE COURT: Answer the question. You can say yes or no. It is a plain question.

A. I knew it to be a short statement, and requested the stenographer to write that down in his own handwriting.
Q. How long were you and the stenographer and Conlan in that room together, about?
A. About twenty minutes.
Q. Not over twenty minutes?
A. About twenty minutes.
Q. You were a detective?
A. Yes.
Q. Then investigating this thing?
A. Yes.
Q. And you investigated Conlan in twenty minutes?
A. Yes.
Q. Did it rapidly, I suppose?
A. Well, that accounts for itself, that statement. You can figure out the twenty minutes.

Q. Took twenty minutes to write that statement?

A. I didn't say it took twenty minutes to write that statement.

Q. But twenty minutes to investigate to the extent of this paper?

A. Yes, sir.

Q. And you as a detective got all of that stuff in twenty minutes?

A. Yes, sir.

Q. And reduced it to writing. Was it reduced to writing right there and then?

A. Just as it was given by the boy, yes.

Q. You asked the boy questions, didn't you?

A. Yes, a few. He was very free to talk.

Q. You asked the boy a few questions?

A. Yes.

Q. And he answered those few questions, and the stenographer that was there, with his pen and ink, and took it down, didn't he?

A. The stenographer wrote it out as you find it there.

Q. Didn't he take anything down stenographically?

A. I think not. Not that was used anyhow. That is the statement—

Q. Did he take anything down stenographically that was not used?

A. I don't think he did; no, sir.

Q. Did you see any other paper than this there?

A. There?

Q. Yes.

A. No.

Q. None at all?

A. No. I don't know what you mean by any

other paper. No other paper referring to this case.

Q. And there was nothing taken down stenographically except this?

A. No, sir.

Q. And after it was taken down stenographically, was it transcribed?

A. It was not taken down that way. The paper was taken down as the boy gave it.

Q. And then there was nothing taken down stenographically?

A. No, sir.

Q. And that paper, as I hold it in my hand, contains just what that boy said, doesn't it?

A. Yes, sir.

Q. And as he said it?

A. It does. There may be a few questions, you know.

Q. There may be a few questions?

A. There might have been a few questions by me. I can't exactly remember now.

Q. Did the stenographer take those few questions down?

A. It is all there on that paper.

Q. Then the stenographer did not take anything down that is not in this paper?

A. No, sir.

Q. And all that was said then is in this paper?

A. Certainly.

Q. Certainly. And just as it appears in that paper so it was uttered by Conlan?

A. Yes, sir.

Q. That you are sure of?

A. I am.

Q. And it took twenty minutes to do that?

A. Well, I was in the office about twenty minutes.

Q. About twenty minutes. And it is in Conlan's language, of course?

A. Yes.

Q. Just as he uttered it?

A. It is, yes.

Q. This was taken at the Williams & Clark plant, wasn't it?

A. My recollection is it was Liebig's. Might have been. Wherever the boy was employed. As I said before, I was to a number of different factories at that time.

Q. But you are a detective?

A. Yes.

Q. And you can't tell now which plant this was taken at?

A. In my judgment it was the Liebig plant.

Q. The Liebig plant?

A. That is my judgment, yes. That is my recollection.

Q. Did you have two interviews with Conlan?

A. No, sir.

Q. Only the one, and at that one this paper was taken?

A. Yes.

MR. McCARTER: That is all I want to be sure of.

MR. STRICKER: There was a typewritten statement. You will get it in a minute.

MR. WESCOTT: I asked this witness whether anything was taken down stenographically, and transcribed. I asked him over and over again, and he said no.

THE COURT: Well?

MR. WESCOTT: Now counsel gets up and says there was—

MR. McCARTER: He does not say anything of the kind.

MR. WESCOTT: Then I am entirely at sea and do not understand the situation.

MR. STRICKER: You will in a moment.

THE COURT: Proceed.

MR. WESCOTT: Wait a minute.

Q. Was there something taken down stenographically and transcribed?

A. I told you no a number of times.

MR. WESCOTT: That is what I thought.

MR. McCARTER: We don't claim there was.

MR. WESCOTT: I thought you said there was.

MR. McCARTER: Oh, no.

RE-DIRECT EXAMINATION:

By MR. STRICKER:

Q. Now, Mr. Oliver, after you had obtained this statement, state whether or not you had it typewritten, and whether the typewritten copy is not in your hand now?

THE COURT: Why wasn't that put in in your examination in chief?

MR. STRICKER: It was an omitted question. I propose to show—

MR. McCARTER: Merely a typewritten copy of the original.

MR. STRICKER: That is all it is.

THE COURT: You want to offer that in evidence?

MR. McCARTER: No, sir.

MR. STRICKER: I want to make an explanation to this extent—

THE COURT: No, I do not want any argument. What are you offering now?

MR. STRICKER: I am going to offer both.

THE COURT: You had better separate them, I think.

MR. STRICKER: That is just what I am trying to do.

THE COURT: Which do you offer?

MR. STRICKER: I offer the written statement now.

THE COURT: Any objection to that on the part of the State?

MR. WESCOTT: This (indicating)?

THE COURT: Yes.

MR. WESCOTT: No.

THE COURT: That will be admitted in evidence.

(Paper heretofore marked D-2 for identification, entered in evidence and marked Exhibit D-2.)

Q. Now, Mr. Oliver, I show you a verbatim copy of the written statement?

A. Yes, sir.

Q. Will you kindly tell the court and jury when and where that was written?

THE COURT: Why? What has that to do with it?

MR. STRICKER: Why, it has this to do with it: They are making a point about it, and they made a point about it yesterday, that there was a typewritten paper. Now the fact is that there is a typewritten paper and here it is.

THE COURT: That cannot go in evidence, can it?

MR. STRICKER: Yes, it can.

THE COURT: On what theory?

MR. STRICKER: On the theory that both papers were handed to me by Mr. Oliver, and that one is an original.

THE COURT: The original has been admitted in evidence. What do you want to do with a copy?

MR. McCARTER: Mr. Wescott has said that we were suppressing some evidence.

THE COURT: That don't make any difference what he happens to say. We have to try this case according to—

MR. McCARTER: I do not want any comment made about our failure to produce a typewritten copy. Mr. Wescott has been talking about a typewritten copy that we took off that. He asked Mr. Stricker where is that typewritten copy, or your typewritten paper. Now there it is. I do not want any comment made on it.

THE COURT: There is no typewritten paper now submitted competent to be admitted in evidence, and that is all I have to pass on.

MR. STRICKER: I want to add further that when Mr. Oliver handed me this paper it had attached thereto the typewritten statement?

THE COURT: I do not care anything about that.

MR. STRICKER: And it was detached by me yesterday.

MR. McCARTER: That is it.

THE COURT: That typewritten paper is not admitted.

MR. STRICKER: As long as no comment is made on it we do not care.

THE COURT: Now proceed, Mr. Stricker, with your case.

RE-CROSS EXAMINATION:

By MR. WESCOTT:

Q. Was Exhibit D-2 read to Conlan?
A. Is this the paper that I allude to?
Q. Yes.
A. It was, yes.
Q. Was there any other paper there on that occasion?
A. In connection with this case?
Q. Yes.
A. No.
Q. And no other paper was read to him?
A. No.
Q. Did you read it?
A. Either I or the Notary, or both read it. I think I read it before I called the Notary in. He wasn't there when the statement was taken, but he read it.
Q. The Notary wasn't there. Then did you or the Notary or the stenographer read it, now which?
A. Now, my recollection is that both the Notary and I read it. I think I read it before he was called in.
Q. Was it read to him according to your recollection twice?
A. I am positive about my reading it to him, yes.
Q. And there was no other paper there, you are sure of that?
A. No.

THE COURT: I see there are some pencil marks on this. They ought to come off before it goes to the jury.

MR. WESCOTT: If it says original, that implies that there was a copy.

MR. STRICKER: With this comment before the jury I think we ought to be permitted to show what the copy it.

MR. WESCOTT: I have no objection in the world.

MR. STRICKER: The Attorney General just said that this is an original—

THE COURT: All right. The State agrees that the copy may be offered in evidence.

By MR. STRICKER:

Q. Mr. Oliver, when this statement was handed to me, state whether or not this paper was attached to it?

A. It was attached to it by me.

Q. Will you kindly tell us where this paper was typewritten?

A. After my return home I had that copied, one copy for you and one for me, to help you here, in reading that instead of that writing.

Q. State whether or not you attached it to this paper?

A. I did.

MR. WESCOTT: Give me the name of the stenographer who was there?

THE WITNESS: Mr. Dwyer.

MR. STRICKER: He will be here.

THE WITNESS: He will be here, I think, this afternoon.

MR. STRICKER: Now, Mr. Attorney General, and staff, will you kindly agree with me that I detached this here yesterday in the presence of everybody?

MR. WESCOTT: Certainly.

JAMES BAVIER, one of the defendants, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Where do you live, Mr. Bavier?
A. Bayonne, New Jersey.
Q. And how old are you?
A. 42.
Q. Are you married?
A. No, sir.
Q. Where were you employed during the early part of this year?
A. At the Williams & Clark plant at Carteret or Roosevelt, New Jersey.
Q. And what is your business?
A. At the present time I have been working as a deputy sheriff.
Q. Well, what was your business before you worked as a deputy sheriff?
A. I have a trade as an electrician.
Q. How long have you lived in the State of New Jersey?
A. Over seven years.
Q. And have you lived in Bayonne all that time?
A. Why, the majority of the time. My parent home is there, and if I am working out of town I live where I am working.
Q. You are a veteran of the Spanish-American War?
A. Yes, sir.
Q. How did you come to go to the plant of the Williams & Clark plant?

A. Well, I keep in communication with Mr. O'Brien's office at Newark, and I called him up that afternoon or evening and asked him if there was—

THE COURT: No.

Q. Don't give any conversation.

A. I called him up by phone.

Q. And did you come to the county of Middlesex?

A. Yes, sir.

Q. And when you came, where did you come to?

A. To Roosevelt.

Q. And who did you meet when you came to Roosevelt? Did you meet the Sheriff of this county?

A. At that time?

Q. Yes.

A. No, sir.

Q. How soon after you got there did you meet the Sheriff?

A. Within an hour or two.

Q. Were you sworn in by him as a deputy?

A. Yes, sir.

Q. And that was on what day?

A. The day that I reached there was on the 5th day of January.

Q. And were you there until the 19th?

A. Yes, sir.

Q. Every day?

A. Yes, sir.

Q. What were you doing there between the 5th and the 19th days of January?

A. Acting as guard.

Q. Where?

A. At different parts of the plant.

Q. Directing your attention to the morning of the 19th, state whether or not you had any information regarding a demonstration which had taken place at Liebig's?

THE COURT: When?

MR. STRICKER: On that same morning.

A. I heard some talk of it.

Q. And what was the talk that you heard?

A. That there was a number of men supposed to come down and cause trouble at the plant.

Q. Yes. Did you hear about any trouble at Liebig's?

A. Yes.

Q. At what time did you hear that?

A. It was around seven o'clock at first.

Q. Now, directing your attention to the neighborhood around eight o'clock, I will ask you where you were at that time?

A. On the platform in front of the office of Williams & Clark's plant.

Q. And did you see anything?

A. Yes.

Q. Well, tell us what you saw?

A. Quite a number of men marching down the railroad tracks from the direction of Carteret.

Q. Who were those men, do you know?

A. Why, strikers, I believe.

Q. And in what numbers did you see them?

A. There were at least two hundred, maybe four hundred of them.

Q. Did they keep on marching or did they stop?

A. They marched until they reached in the vicinity of the Williams & Clark railway station.

Q. What did they do when they reached that vicinity?

A. Kind of spread out.

Q. Did they have anything in their hands?

A. Yes, sir.

Q. What was it?

A. From where I stood it appeared to be clubs, sticks.

Q. Did they do anything at that station?

A. Why; yes, sir.

Q. Tell us what they did.

A. They started in to call us all kinds of names.

Q. What did they actually do?

A. And call us so-and-so's, and scabs.

Q. What do you mean by so-and-so's?

A. Well, there is ladies in the court.

Q. Well, I can't help that.

A. Well, called us sons-of-bitches and cock-suckers.

Q. What did they actually do?

A. Then before we left there—they fired shots at us.

Q. Now, before they fired any shots, did you see any railway ties, or the railroad being obstructed?

A. Yes, sir.

Q. Just describe what you saw.

A. One of the men called my attention to the fact that there were railroad ties on the track, and I had to stand upon a box to look over the fence and I saw that there were railroad ties, they appeared to me to be railroad ties from the distance, piled on the track, with some sort of a sweater on them.

Q. Did you see a pole with a red piece on it, a red flag?

A. Yes, sir.

Q. What did you do then?

A. Why, I looked down in the direction that the train was supposed to come in, to see if the train was anywhere in the vicinity, and it wasn't exactly there then and I waited—

THE COURT: What did you do, is the question.

MR. McCARTER: I think it is very important, if you will give him a moment.

THE COURT: No, he was asked what did he do.

A. I looked up the track to see if the train was coming.

Q. What did you do then?

A. Waited until the train got close to the obstruction and started over towards the train.

Q. Was it usual for the guards to walk over towards that train every day?

A. It was one of my duties to walk to that train each morning and escort whatever men was on that train that belonged on the plant.

Q. What do you mean, belong on the plant?

A. Men who were employed at the plant, office force.

Q. And on this morning you did just exactly what you had done other mornings?

A. Yes, sir.

Q. Now, tell us what happened?

A. On our way over—previous to starting there were some shots fired toward the direction of the plant, I believe about five.

Q. Towards the direction of the plant?

A. Yes, sir.

Q. By whom?

A. I believe they were revolver shots.

Q. By whom?

A. By some of the crowd or mob that was over at the station.

Q. What did you do?

A. Kind of paused me for a moment. Then I had to go over because my duty called me to go over and bring these people in as safely as I could. I started over and there was other men started over with me. Who they were I don't exactly know, but I know that there were other men went over with me. Went over towards the train and on the way over they continued to hurl stones at us and I heard revolver shots from that direction, and sticks. We got over at the train, this obstruction wasn't there yet, someone had removed the obstruction, I wasn't paying much attention to that at that time. All I was paying attention to was to get the people from the train into the plant safely.

to was to get the people from the train into the plant safely.

Q. Well, tell us what occurred?

A. There was firing, they were hurling stones and sticks at us, and quite a number of shots I heard from the direction where they were.

THE THIRD JUROR: This is altogether wrong. We are not getting half of this.

MR. STRICKER: If the jury has only heard one-half of it, I would ask that the testimony be read to them by the stenographer.

THE COURT: We cannot stop to do that.

MR. McCARTER: I think the jury ought to hear the evidence.

THE COURT: Do you say you have not heard the evidence?

THE THIRD JUROR: Just this last part. I

said I didn't believe there would be more than one-half of this witness's evidence heard.

MR. McCARTER: I think it ought to be heard.

THE THIRD JUROR: So do I.

THE COURT: This man's entire evidence to be read?

THE THIRD JUROR: I do not think it would be amiss.

THE COURT: You have not heard it?

THE THIRD JUROR: No.

THE EIGHTH JUROR: I heard most of it excepting the last part of it.

THE FOURTH JUROR: The most of it we didn't hear.

(Last two questions and answers read by the stenographer.)

Q. Did anybody get off the train connected with the plant?

A. Yes, sir.

Q. Do you know who?

A. Why, I don't really recall them by name, but I knew the men that they belong in the office.

Q. Were they escorted to the office?

A. Yes, sir. I assisted in escorting them there.

Q. Did you see anybody after you got to the office or towards the office?

A. Why, yes.

Q. Did you see any police officer?

A. Yes, sir.

Q. Which police officer did you see?

A. Officer Dowling.

Q. The gentleman who testified here yesterday?

A. Yes, sir.

Q. Did he say anything to you?

A. Why, yes; he said—

MR. WESCOTT: I object.

THE COURT: Did you ask him about this talk with this witness yesterday?

MR. STRICKER: I did not.

THE COURT: Then it is not competent. You must lay the foundation if you want to contradict the witness. It would not be fair to the officer.

MR. STRICKER: It is not offered as a contradiction. It is simply offered as something that actually occurred.

THE COURT: Then it would not be competent if it is—if you want to prove what somebody else said, of course that is hearsay, that would not be competent. If you want to prove something that the man said, in order to contradict him, you must first call his attention to it, because otherwise it would not be fair, he would not have fair treatment. He ought to have the chance to say whether I said yes, or I didn't say it.

MR. STRICKER: The purpose of this testimony—

THE COURT: It is not a question, Mr. Stricker, of the purpose of the testimony. The question is legality. Now, I overrule your question unless you can give me some other reason, that is, a legal one.

MR. STRICKER: I would like to get the benefit of an exception, to your Honor's ruling.

THE COURT: Take an exception.

MR. STRICKER: And the only way that I can get it properly on the record is to make my offer.

THE COURT: You have asked a question, haven't you?

MR. STRICKER: Yes, sir.

THE COURT: Well, I overrule your question. Take an exception.

MR. STRICKER: May I be permitted to make my offer, and the reason why I ask this question and what I propose to show.

THE COURT: No. You may offer what you propose to prove by putting it in the shape of a question to this witness, and then I will rule on it. But I will not rule on anything in advance. This present question I overrule, and you take an exception to that, so you have the benefit of that.

MR. STRICKER: Yes, but I ask for permission to state my grounds, the reason why I asked this question, in order that you may have a complete record.

THE COURT: No. I overruled it.

MR. STRICKER: All right.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Did anyone fire at you?

A. I cannot say whether they fired directly—that is, meant to fire at me individually, I can't say that.

Q. Well, was there any evidence of any firing near you, other than what you heard and what you saw?

A. Why, I could hear a shot go by me, or at least I thought I did.

THE COURT: Speak louder. This is your testimony and if you won't speak so the jury can hear you, you will not get the benefit of it. That is all.

Q. Was it one shot or more than one shot?
A. More than one shot.
Q. What did it seem to be?
A. A revolver shot.
Q. Were you armed?
A. Yes, sir.
Q. What were you armed with?
A. Revolver.
Q. Did you fire that revolver?
A. No, sir.
Q. At any time that morning?
A. No, sir.
Q. Did you notice whether or not any of the men, any of the guards who came from that plant on that morning had a red sweater?
A. No, sir.
Q. Did you see any guard about that plant at any time, either on the day of this affray, or before or after, wear a red sweater?
A. No, sir.
Q. Directing your attention to the night before the 19th, state whether or not there was any shooting going on in the vicinity of the plant?
A. There was.

THE COURT: One minute.

MR. WESCOTT: That is objected to.

THE COURT: The night before?

MR. McCARTER: This is during the night preceding the morning of the 19th. That is the night of the 18th and 19th.

THE COURT: It is no part of this transaction?

MR. McCARTER: If these strikers were shooting at the plant during—an hour before this occurrence, I suppose that is too far distant?

THE COURT: Well, you did not fix the time. If you will fix the time I will rule on it.

Q. At what time during the night?

A. I believe it was after twelve o'clock.

Q. And with what frequency?

A. Well, I believe about—I know. About three or four minutes it lasted. About three minutes.

Q. How frequent through the night?

A. On this one occasion is all I remember.

Q. What was it?

A. Sounded like a revolver shot.

Q. Did they come from outside of the plant?

A. Yes, sir; from the direction of the station.

Q. How long before the 19th had a crowd congregated, if at all, in and about that station?

MR. WESCOTT: I object to that.

Q. (Question repeated by stenographer.)

THE COURT: I overrule it.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. When did you first see a crowd, if at all, in and about the station on the morning of the 19th?

A. After they had walked down from the direction of Carteret, about seven o'clock.

Q. Was anybody there before seven?

A. There might have been one or two over there, or three.

Q. Had you seen a crowd congregate there on other days?

A. Not as many. A few.

Q. How early?

MR. COAN: I object.

A. At the same time.

THE COURT: I will allow it.

Q. Did you see any bonfires built there?

A. Yes.

Q. By whom?

MR. COAN: I object.

THE COURT: When?

MR. STRICKER: On days prior to the 19th of January.

THE COURT: Mr. Stricker, I have ruled that evidence out several times. I now rule it out again.

MR. STRICKER: All right.

Q. Did you see a bonfire there on the morning of the 19th?

A. Not at the station.

Q. Well, near the station?

A. Why, quite a way up on the road. They had a habit of building fires there while they were doing picket duty.

Q. How far from the station was the fire?

A. I should judge about a half a mile.

Q. State whether or not there were many people about that bonfire?

A. It was quite a distance off. Couldn't tell

very well, but you could see the shadows moving between the light of the fire and where we were.

Q. How early?

A. Oh, I guess three or four o'clock in the morning.

MR. STRICKER: You may cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. How old are you, Mr. Bavier?
A. What did you say, sir?
Q. How old are you?
A. 42.
Q. Where were you born?
A. United States.
Q. Where?
A. United States.
Q. Whereabouts in the United States?
A. 49 Christopher street, New York City.
Q. How long have you lived there?
A. Oh, I guess about 15 years, 12 or 15 years. I don't really remember.
Q. Where did you go from there?
A. Went to Hudson street, I believe it was.
Q. New York?
A. Yes, sir.
Q. Whereabouts in Hudson street?
A. In the neighborhood of Dominick street.
Q. Well, can't you tell the number of your home?
A. Why, I think I can.
Q. Well, tell us.
A. I think it was two hundred and fifty something.
Q. What street?
A. Hudson street.
Q. How long have you lived there?
A. Four or five years.
Q. Then where did you go?
A. Bayonne.
Q. When did you go to Bayonne?

A. Why—well, that was about 22 years ago I should judge.
Q. 22 years ago?
A. About that.
Q. Who lived with you at Bayonne?
A. Why, my father.
Q. Whereabouts in Bayonne did you live?
A. Why, they call it the foot of the 34th street now.
Q. Give us the number?
A. On the New York bay side.
Q. Give us the number?
A. No number.
Q. And you lived there how many years?
A. Eight years at that time.
Q. Eight years at that time?
A. Yes, sir.
Q. Well, what time was it? Give us the eight years.
A. That was the time that my father was living.
Q. Is your father alive now?
A. No, sir.
Q. What eight years did you live at this place in Bayonne?
A. That would make it, I guess, 14 years ago.
Q. Was it east or west?
A. East or west what?
Q. East or West 34th street in New York that you lived?
A. I didn't say anything about 34th street in New York.
Q. In Bayonne?
A. East.
Q. Well, now you lived there until when, did you say?
A. I am living there now.

Q. Well, you are living there now?
A. Yes. 36th street I am living now.
Q. How long have you lived there?
A. Seven years.
Q. Seven?
A. Yes.
Q. With whom?
A. My sister.
Q. What is her name?
A. Forshay.
Q. Is she there now?
A. Yes.
Q. Spell the name, please?
A. F-o-r-s-h-a-y.
Q. Anybody else live in that house?
A. Why, no. They own the house?
Q. What sort of a looking house is it?

MR. STRICKER: I submit this is not material.

THE COURT: I will allow the question.

A. Two story frame. Two story and attic, a sort of attic, frame building.

Q. What have you done for this last ten or fifteen years?

A. Why, I have been working at the electrical business and I have been working for Mr. O'Brien.

Q. Where did you work at the electrical business?

A. Why, I was employed by the Government.

Q. By the Government?

A. Yes, sir; the Government.

Q. When?

A. I have been out of their employ now, I guess—I can't give you the exact date, but it is over five years since I have been out of the Government's employ.

Q. How long were you in the Government's employ?

A. About four years.

Q. Where?

A. At the General Postoffice in New York City.

Q. The General Postoffice?

A. Yes, sir.

Q. Well, when you left the Government employ, four years ago, what did you do then?

A. Why, I worked at electrical work and worked for O'Brien.

A. Where did you work?

A. For myself.

Q. For yourself?

A. Yes, sir. Doing repair jobs.

Q. Whereabouts?

A. Anyone that wanted work done.

Q. Where?

A. Anywhere that they wanted a job done.

Q. Where was your place of business?

A. I had no place of business. I was doing my work from my home.

Q. When did you begin to work with O'Brien?

A. Three years ago.

Q. What sort of work have you been doing under O'Brien?

A. Investigations and guard work.

Q. Guard work?

A. Yes.

Q. Have you been a strikebreaker?

A. No, sir.

Q. Never?

A. Will you kindly let me know what a strikebreaker is or what you mean by that?

Q. I am just asking you. If you don't know what a strikebreaker is you can say so.

A. No, I do not.

Q. You don't know what a strikebreaker is?

A. I have heard the name used, but I don't know what it is.

Q. Had no idea of what a strikebreaker is?

A. No, sir.

Q. You gave a recognizance here, didn't you?

A. Gave a what?

Q. Recognizance? A bail?

A. A what?

Q. Bail, bail, bail?

A. Bail here?

Q. Gave bail here?

A. Here?

Q. Yes.

A. Not to my knowledge.

Q. You didn't?

A. Oh, I beg pardon. Yes sir. That had slipped my mind.

Q. And what was it, what place did you say you lived at then?

A. I gave an address of 97 Fifth street, Paterson, New Jersey, I believe it was.

Q. 97 Fifth Street, Paterson, New Jersey?

A. 97 Fifth Street, Paterson, New Jersey; yes sir.

Q. Did you live there then?

A. No, sir.

Q. When was it you gave that address?

A. When was it I gave that address?

Q. Yes.

A. In this building, I believe, upstairs.

Q. On the 20th of January, was it, the day after the shooting?

A. I don't remember the exact date.

&. Whom did you give it to?

A. Why, I believe it was Mr. Florance, if I am not mistaken.

Q. And Judge Daly?
A. He was present, and Mr. Florance was present.
Q. Did you ever live in 97 Fifth Street, Paterson?
A. Why, no, sir, I did not.
Q. Did you ever say you did?
A. Yes, sir.
Q. Whom did you say that you lived—whom d d you tell that you lived at 97 Fifth Street?
A. Mr. Florance, I believe, upstairs, or the bonding man, whoever he was.
Q. So there are three places you are living?
Three places?
Q. Yes.
A. I am living?
Q. Yes.
A. No sir.
Q. 97 Fifth Street, Paterson?
A. I believe I just told you I was not living there.
Q. Well, didn't you say that you told Mr. —— the Prosecutor that you did live there?
A. Yes, sir.
Q. And when you gave your recognizance you lived at 97 Fifth Street, Paterson, and now you live over at Bayonne?
A. No. I am living in the County Jail now.
Q. Well, that makes four places.
A. Yes.
Q. Do you know where Noll's Hotel is in New York?
A. Yes, sir.
Q. Do you know Minetta's Cafe in New York?
A. No, sir.
Q. Bleecker Street and West Broadway?
A. Yes, sir.

Q. You don't know that Cafe?
A. I don't know the Cafe.
Q. When did you first get word to come here?
A. I telephoned to the office.
Q. What office?
A. O'Brien's office.
Q. Where were you when you telephoned to him?
A. In Bayonne.
Q. Who telephoned to you?
A. I telephoned there.
Q. You telephoned there; what for?
A. About —— to inquire if there was anything doing.
Q. If there was anything doing?
A. Any work to be had, yes, sir.
Q. What business were you engaged in at that time?
A. Why, I was waiting for something.
Q. You were waiting for business?
A. I was waiting, yes, sir.
Q. And you got it when you got word from O'Brien?
A. Yes, sir.
Q. How much are you getting a day for that business?

MR. STRICKER: I object. I think that is immaterial.

THE COURT: What is the ground? I did not hear you.

MR. STRICKER: I say it is immaterial.

THE COURT: I will allow it.

Q. How much a day are you getting for it?

THE COURT: Answer the question.

A. One moment, please. I want to give him the right answer. Three dollars a day.

Q. Whom did you make your agree ment with?

A. What agreement have you reference to.

Q. By which you get three dollars a day for the work you are doing?

A. On this particular job that I was working on?

Q. Yes.

A. Why, I had made arrangements down there with —— no, I did not make arrangements there. I understood that it was three dollars a day when I was employed. There was no specified amount mentioned.

Q. How much have you been getting?

A. Three dollars a day; that is what I said.

Q. Who pays you?

A. Why, a man by the name of Manning.

Q. Is he O'Brien's cashier?

A. I believe so.

Q. He comes down here every Thursday and pays you, doesn't he?

A. Well, I don't say he comes down every Thursday.

Q. Well, you have been paid every day since you have been locked up, three dollars a day, haven't you?

MR. McCARTER: Does your Honor think that is material whether he has or has not?

THE COURT: Not very.

MR. McCARTER: Shall we take the time? You know we have been pretty well pressed for time and we have been hurried along here. Now I think that has gone far enough.

MR. WESCOTT: If I am consuming time what are you doing now.

MR. McCARTER: I am making objection to your consumption of time.

MR. WESCOTT: Well, I am making objection to your consumption of time.

THE COURT: Proceed.

Q. How long had you been down here at Williams & Clark's?

A. From the 5th day of January.

Q. From the 5th day of January?

A. Yes, sir.

Q. And did you remain there all the time?

A. Yes, sir.

Q. When were you sworn in by the Sheriff?

A. On the morning of the 6th.

Q. Where?

A. At the office of Williams & Clark.

Q. In whose presence?

A. In the presence of the— the Sheriff swore us in in the presence of the rest of the men who were sworn in at that time.

Q. How many of them were there?

A. Oh, I really don't know how many. There were over a doezn.

Q. Give us now your full knowledge on that subject? How many were there?

A. I am trying to give you my full knowledge. I can't state the exact amount. I say over a dozen.

Q. How many over a dozen?

A. I can't really say.

MR. STRICKER: Now I object to this. I submit this is immaterial.

THE COURT: I overrule the objection.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Q. Did that constitute the whole number of deputies at that place?

A. Why, no.

Q. How many deputies were there there?

A. I believe 44 or 45, probably more.

Q. Were they there all the time from the 5th of January with you down until the 19th?

A. All of them there at all times? That I cannot answer.

Q. You saw them every day, did you?

A. No. Not all of them.

Q. Well, most of them?

A. Yes.

Q. You saw all of them sometimes?

A. Yes.

Q. You were all associated together?

A. Yes.

Q. Talked together?

A. Yes.

Q. Knew each other?

A. Well, acquainted with each other.

Q. Acquainted with each other?

A. Yes.

Q. Knew each other's names?

A. No, not all of them, I did not.

Q. How many of them were there whose names you do not know?

MR. McCARTER: I object to it as not cross examination and as immaterial.

THE COURT: I think it may be. I will allow the question. Take an exception.

Exception allowed. Let is be sealed.

JAMES J. BERGEN,
Judge.

Q. How many of them were there there whose names you do not know and didn't hear?

A. How many of them were there whose names I didn't know and didn't hear?

Q. Yes, sir.

A. I can't tell, how many I hadn't heard; but I can tell you there was quite a number there I didn't know by name.

Q. Do you know these gentlemen by name?

A. Yes, sir.

Q. Do you know the rest that are now in prison over here by name?

MR. McCARTER: Objected to as immaterial.

A. Yes, sir.

MR. McCARTER: Is there some limit? Whether he knows the names of the men in jail, can that be material to this?

THE COURT: He didn't see them with a body of men. Don't shake your head, Mr. Stricker; I may make a mistake, but you had better arise and correct me in that way, as I understand this gentleman testified in chief that it was his duty to go over and escort some men, that he went that morning and some men were with him, but he don't know and couldn't tell who they were; he couldn't recall; and I think on cross examination it is perfectly proper for the State to see whether he can recall any of these men that were here as being out there with him.

MR. McCARTER: He is asked about the men in jail.

THE COURT: The present question is about the men here.

MR McCARTER: No, in jail.

(Question repeated by stenographer.)

THE COURT: Do you want that stricken out, Mr. McCarter?

MR. McCARTER: Yes, sir, as immaterial.

THE COURT: Strike that answer out at immaterial.

MR. McCARTER: I object to the question; I think the question ought to be stricken out.

THE COURT: When you strike out the answer, the question goes with it.

MR. STRICKER: I would like to apologize; I had no intent on my part to be disrespectful. I understood the testimony to be in a preceding question, differently from the Court.

Q. Do you know T. Gordon.

MR. STRICKER: We object, if your Honor please, as being immaterial.

Q. (Repeated.)

THE COURT: I will allow the question.

A. T. Gordon?

Q. Yes.

A. No.

Q. Do you know Carl Smith?

A. Yes, sir.

Q.* Do you know F. Muller?

A. Yes.

Q. Do you know F. Murphy?

A. Know F. Murphy?

Q. Or J. Murphy?

A. No.

Q. Do you know a man in prison by the name of Murphy?

MR. McCARTER: I object, that has already been ruled out.

THE COURT: That name isn't among these defendants?

MR. WESCOTT: One of the defendants.

MR. McCARTER: He is in prison, Your Honor.

MR. WESCOTT: He was up there before; I want to know if he knows who—

THE COURT: I will overrule that; you must confine your cross examination of this witness to these defendants, because that is only allowed on the theory the defendant brought out; the fact that he did go over there on the morning with some other men, he don't recall; but if not these defendants it is absolutely immaterial in this case.

Q. Do you know R. Wallace?

A. Yes, sir.

Q. Do you know J. Williamson?

A. No, sir.

Q. Williams?

A. Williams, yes.

Q. Do you know J. Rick?

A. No.

Q. Do you know Fred Rick?

A. No.

Q. Do you know F. Mullen?

A. I have answered that before.

Q. Do you know Mullen?

A. Yes, sir.
Q. Do you know James Smith?
A. Yes, sir.

MR. STRICKER: We object.

Q. Do you know J. Bedell?

MR. STRICKER: We object to that.

THE COURT: That name is not among the defendants.

Q. Walter Bedell?

THE COURT: His name isn't among these defendants.

MR. WESCOTT: I know it isn't.

MR. McCARTER: The ruling does not go with the attorney general.

MR. WESCOTT: Possibly the way you understand that. If your Honor please, I want to find out if this man knows the deputies that were down there, or at that factory that day; that is what I am after. I don't care whether they are in jail or in Kamchatka. I want to know if they went down with him.

THE COURT: Upon what theory would that be at all material in this case?

MR. WESCOTT: He said there as a lot of deputies down there, and when he went out that morning some others went out, he didn't know who. I want to see if he knows these men, and if I can get him to admit that they went out with him.

THE COURT: I think you ought to confine

your examination to these defendants.

MR. WESCOTT: All right.

Q. Well, you know these defendants here, don't you?

A. Yes.

Q. Every one of them?

A. Yes.

Q. Did you know them on the 19th of January last?

A. Yes.

Q. Did you see any of them on the 19th of January last?

A. Yes.

Q. Where did you see them?

A. On the platform of the Williams & Clark plant.

Q. All of these defendants?

A. I didn't see all of them.

Q. Well, how many of them?

A. Some of them.

Q. How many?

A. Well, I can't really tell you.

Q. Oh, give us some idea now?

A. There was at least forty men on that platform. I can't tell you among forty men how many of these men were there.

Q. The forty men included all the deputies you had down there?

A. No, I didn't say that.

Q. How many did you have down there?

A. I believe there was forty-four or more.

Q. Well, it included all but the four or more that were on that platform?

A. I won't say that.

Q. Now state to me those that you did see on the platform?

A. I saw Williams on the platform, I seen Mullen on the platform, I seen Wallace on the platform; that is all I remember seeing on the platform?

A. I am positive of those men.

By THE COURT:

Q. What are the names again?

Mr. McCARTER: Williams, Mullen and Wallace.

Q. Mullen is one?
A. Williams and Wallace.
Q. And more?
A. That is all I can positively know.

By MR. WESCOTT:

Q. Did you see Smith there?
A. No.
Q. Was Smith there?

MR. McCARTER: I object as utterly immaterial. Smith has been acquitted.

THE COURT: I think that is immaterial. I overrule that question.

Q. When you were sworn in by the sheriff, were you all sworn in together with uplifted hand?
A. Yes, sir.
Q. And standing in a row, weren't you?
A. No; not exactly in a row; we were standing up facing the sheriff.
Q. In a group?
A. Sort of a semi-circle.
Q. And you were each given a pistol, weren't you?
A. No, sir.
Q. And so many rounds of ammunition?

A. No, sir.
Q. You weren't?
A. No, sir.
Q. Did you get any pistol?
A. There? No, sir.
Q. You had a pistol when you went there?
A. Yes, sir.
Q. Took it there with you?
A. Yes, sir.
Q. Did you take the ammunition there with you too?
A. Yes, sir.
Q. And you didn't get any pistol or ammunition at all there at the works?
A. No, sir.
Q. Did you see any ammunition there?
A. Yes, sir.
Q. Where was it kept?
A. Why I got some of one of the boys.
Q. What boys?
A. One of the deputies.
Q. Who was he?
A. I forget the name.
Q. Can you give us the name?
A. No.

MR. McCARTER: Does your Honor think that is cross examination? I object to it.

THE COURT: He says he don't remember. I don't think it did any harm.

MR. WESCOTT: That is the defendant; we are not limited to the strict pursuit of what he said in chief.

MR. McCARTER: Certainly.

Q. Well, when did you get that ammunition?

MR. McCARTER: I object to that.

THE COURT: I will allow the question. Take an exception.

Exception allowed. Let is be sealed.

JAMES J. BERGEN,
Judge.

A. Somewheres around the 8th or the 9th. I was up there a couple of days when I got it.

Q. Was your gun loaded when you went up?

A. No.

Q. And you got some to load that gun?

A. No, I had some cartridges in my grip, but I didn't carry it loaded in the grip on account it might accidentally go off.

Q. What difference does that make to you?

A. It is liable to explode, because it will cause the barrel to burst.

Q. When you fire or before you fire?

A. I don't think they would explode before you fire them.

Q. They would explode when you fired them whether they were rusty or not?

A. No, sir, they wouldn't.

Q. They wouldn't?

A. No, sir.

Q. You want shells that will explode?

A. Yes, sir.

Q. And the others you didn't want?

A. The others are of no use.

Q. You wanted shells that would explode?

A. Yes, sir.

Q. Why?

A. A revolver without shells that will explode is not worth having.

Q. Why did you want a revolver with shells that would explode?

A. I naturally wanted a revolver to protect myself.

Q. Why?

A. I wanted shells to load the revolver.

Q. Why did you want to protect yourself?

A. Because I had an idea in taking a job of this kind where I have handled it before where my life was threatened that I had a right, or ought to have something to protect myself.

Q. How many times have you been on jobs like this before?

A. Half a dozen or may be a dozen.

Q. Where?

A. Morristown—or rather not Morristown, but Wharton, and another time at Paterson, New Jersey, and next time here.

Q. And one time Trenton?

A. I never worked in Trenton.

Q. Pajemet?

A. No.

Q. Have you been to Calumet?

A. No sir, I was not.

Q. Michigan.

A. No, sir.

Q. What other places have you been in doing this kind of work?

MR. McCARTER: I object to that as immaterial.

THE COURT: I am willing to be a little liberal because this is the defendant, but I don't see how this is very important, except so far as the examination tends to develop whether he is a credible witness or not, because I may say now the view I take of the case so far as it has developed, it don't make very much difference how this man got there and whether he was a deputy, or

whether he was not a deputy. The question is whether he did what was an unlawful act after he got there, and his previous life, of course, may have some effect upon his credibility, if he is not telling the truth, that is all.

MR. WESCOTT: That is the only reason I am inquiring into it; birds of a feather flock together, and what men are in the habit—for years—of doing, they are likely to do again.

THE COURT: I think you have gone far enough.

MR. WESCOTT: This is a pretty dangerous habit this man is cultivating, and that is the reason I ask these questions.

MR. McCARTER: Does your Honor think that is a proper remark to make.

THE COURT: No, I think there has been quite plenty of argument on formal motions without that, and I think both sides are a little to blame for that.

MR. WESCOTT: I think your Honor is right.

(Whereupon, a recess was taken until 2 o'clock P. M.)

AFTERNOON SESSION, 2 o'clock P. M.

CROSS EXAMINATION (Continued):

By MR. WESCOTT:

Q. Do you know the exact number of deputies who were at the Williams & Clark plant?

A. No, sir.

Q. Do you think there were forty or fifty?

A. I believe there was over forty.

Q. What?

A. I believe there were over forty.

Q. They lived at the plant, didn't they?

A. Yes, sir.

Q. What part of the plant did they live in?

A. In the office.

MR. McCARTER: Can that be material, your Honor, what part of the plant they lived in.

THE COURT: It may be, I can't say that it is not.

Q. What part of the plant did they live in?

A. The upper part of the office building.

Q. The upper part of the office?

A. Yes.

Q. Live there together?

A. Some in there and some at other parts of the plant.

Q. What other parts?

A. Different rooms in the office that were distributed about the plant.

Q. All over the plant?

A. Not every place; there were two or three different places where the men were, where they slept.

Q. And where did the men eat?

MR. McCARTER: Objected to as immaterial.

THE COURT: I will allow that.

A. A large room they had for that purpose.

Q. All eat together in the same room?

A. All eat in the same room, all use the same room for a dining room, I believe.

Q. You can't be sure about that?

A. Oh, I am positive about that.

Q. Did you eat there together?

MR. McCARTER: I object as immaterial.

THE COURT: I will allow that.

Q. Did you eat there together?

A. Not all at one time. Some would eat and then the others would come in and eat.

Q. Did you get acquainted with them?

A. With some.

Q. Only some?

A. Yes.

Q. How many did you get acquainted with?

A. I guess I knew pretty well all of them when it comes right down to that.

Q. That is when you come right down to it, you knew them all?

A. That is by sight.

Q. You knew them when you saw them?

A. Yes, sir.

Q. And you even know them by name?

A. Yes, sir. Some of them I don't remember by name.

Q. Did you know those that were at the office on the morning of the 19th of January last?

MR. McCARTER: I object to any evidence concerning other people, than those that are here. The other indicted men should not be attempted to be convicted by any evidence in this case.

THE COURT: He can answer that yes or no. He merely asks him if he knows.

MR. McCARTER: I think that is immaterial.

THE COURT: I overrule your objection.

Q. Did you know the men at the office that morning?

A. Some of them.

Q. How many of them do you know?

MR. McCARTER: I object to it as immaterial.

THE COURT: I overrule the objection.

A. I believe all of them men by sight, there was four I remember of being there.

Q. How many do you know of the group who were at the office that morning when the train came in?

A. I can't remember them, but they were there, but I guess I knew 25 or 30 of them.

Q. How many went from the office over to the train?

A. That I don't know.

Q. Give us your best impression about it?

A. I don't know.

Q. Anybody go besides you?

A. There was others went besides me.

Q. About how many?

A. I don't know.

Q. Can you give us any judgment on this subject?

A. No, sir.

Q. Were there a dozen?

A. I can't answer that positively.

Q. What?

A. I can't answer that positively.

Q. Was there as many as twenty?

A. I know there was six or seven; that I know of.

Q. Well, were there only six or seven went out of that office-

A. Sir?

Q. Well, were there only six or seven went out of that office?

A. No, there was more than that.

Q. How many more?

A. I don't really know.

Q. About how many?

A. I wouldn't want to state anything about something I don't know anything about.

Q. Give us your judgment?

A. There may have been forty and there may have been twenty-five.

Q. They went out of the gate there by the office?

A. There may have been.

Q. With you?

A. No.

Q. How many went out with you?

A. I don't know.

Q. Well, about how many.

A. I don't really know. I was one of the first men who started over towards the railroad station. I kept my head in front. I was looking out for the people there that I expected I would be injured by.

Q. Name those you do know that went out again?

MR. McCARTER: Of these defendants?

MR. WESCOTT: That went out.

MR. McCARTER: I object.

THE COURT: Is it limited to the defendant?

MR. McCARTER: Yes.

MR. WESCOTT: Answer the question.

A. I think Mullen was one of them, and Williams; I am not positive about any of the rest of them.

Q. Didn't you name Wallace this morning?

A. As being on the platform.

Q. As having gone out with you?

A. No, sir.

Q. Didn't Wallace go out with you?

A. Not to my knowledge.

Q. Now what was the first difficulty that confronted you when you went out on the platform?

A. Well, on the platform or after leaving the platform?

Q. Well, either?

A. On the platform there was a number of shots fired from the strikers.

Q. Yes, where were the strikers then?

A. Over on the track.

Q. What time was that?

A. About five minutes or so before the train came in.

Q. This was before the train came in five minutes or so?

A. Yes, sir.

Q. You and some others were standing where?

A. On the platform.

Q. On the platform, and the strikers fired how many shots at you?

A. About four or five, as far as I could judge.

Q. I understand that you heard the bullets?

A. I heard the shots.

Q. You heard the shots; didn't you hear the bullets whistling around you?

A. Not at that time.

Q. Not at that time; did I misunderstand when I got the impression that you characterized the shots that came by you as bullet shots?

A. I believe I told you I thought they were revolver shots.

Q. Revolver shots?

A. Yes.

Q. Are you able to distinguish between rifle shots and other gun shots?

A. I am not an expert, but a revolver shot does not sound quite as loud as a gun shot.

Q. That is the explosion doesn't sound quite as loud?

A. Yes.

Q. How about the bullet. Can you distinguish between a revolver bullet and a riflle bullet, and a shot gun bullet?

A. If I have it in my hand I can.

Q. What?

A. If I have one in my hand I can and examine it.

Q. But you can't when they are going by you?

A. No, sir, I don't believe any one can.

Q. Now they shot at you. What did you do?

A. Why, when they shot at the platform, waited there.

Q. Did they shoot at you?

A. I was at the platform.

Q. Did they shoot at you or at the platform?

A. I don't know; they shot in my direction.

Q. They shot in your direction. What did you do then?

A. Waited until the train came in and started to walk over towards the train to meet it.

Q. What was the next difficulty?

A. They started hurling sticks and stones at

us, and hollering at us, "Scab" and Kill them" and other vile words they used.

Q. Where were you when they fired sticks and stones?

A. On my way over to the train.

Q. What part of the way did you cover before they started firing sticks and stones at you?

A. I hadn't left the gate; that is the fence, hardly, before they commenced to fall all around us.

Q. Did the sticks and stones fall all around you?

A. Yes.

Q. These men were over at the depot?

A. Yes, sir.

Q. And throwing stones and sticks at you over at the fence?

A. Yes, sir.

Q. And they fell all around you?

A. I didn't say all around, I said around me.

Q. What do you mean by falling around you?

A. Not all around, I didn't mean a regular circle of them.

Q. How close did they come to you?

A. Some of them pretty close. None of them struck me.

Q. How close did they come to you?

A. What?

Q. How close did they come to you?

A. That far away (indicating about one foot).

Q. About six or seven inches?

A. About a foot.

Q. Were they stones that came within a foot of you, or sticks?

A. Stones and sticks.

Q. How big were the sticks that came within a foot of you?

A. Some of them pretty long.
Q. About how long?
A. Well, a foot and a half or two feet.
Q. What were those sticks?
A. Appeared to be old sticks they picked up on the road. Broom handles and things of that kind.
Q. What else?
A. Just sticks they picked up in the road.
Q. How far did they have to throw those sticks and stones that fell all around you; from the depot over to the fence there?
A. I should judge from the time when they started to throw they were at the fence; but from the time they got so they could reach me, I was quite a little ways from the fence, away about forty feet.
Q. They didn't reach you?
A. I told you that they didn't hit me.
Q. I thought you said they fell all around you?
A. I understood you to ask me what I did then, and I said I started towards the train.
Q. They had some difficulty in getting sticks and stones through the atmosphere?
A. No, I think a man can hurl a stick forty feet.
Q. You were perfectly safe there at the fence from the sticks and stones; the only thing you were in danger from was the bullet?
A. I don't consider I was perfectly safe; no, sir.
Q. That is from the sticks and stones?
A. No, sir; I wasn't safe from them.
Q. They must have got over where you were?
A. Some of them did.
Q. I understood you to say they were calling you all kinds of names?

A. Yes, sir.
Q. All of them?
A. No, not all of them, I wouldn't say that.
Q. The majority of them?
A. Quite a number of them.
Q. What do you mean by quite a number?
A. I didn't have an opportunity to get over there and count them.
Q. But you had an opportunity to see and hear them?
A. I did see and hear them.
Q. Can you form any idea.
Q. Quite a number.
Q. What do you mean by that?
A. I should judge by the noise they were making there was over fifty of them yelling.
Q. Were they Italians?
A. That I can't say.
Q. Was there an interpreter there to tell you what they were saying?
A. I didn't see any.
Q. Did they use these words in Italian tongue, or American?
A. American.
Q. You don't know whether they were foreigners or not?
A. They appeared to be foreigners, but I can't tell whether they were Italians, or not.
Q. Did they speak very good English?
A. Those that hollered, not very well.
Q. You could understand distinctly what they said?
A. Yes, sir.
Q. When you got within twenty or thirty feet of them, they still kept throwing sticks and stones at you?
A. Yes, sir.

Q. And shooting?
A. Yes, sir.
Q. Then they shot at you all the way from the gate clean to the train—20 feet from you?
A. They were shooting during the time we got over there.
Q. And they shot about four or five times when you were on the step. How many times did they shoot while you were going from the step the 20 or 30 feet to the railroad track?
A I was too busy to count?
Q. You were too busy to count?
A. Yes, sir.
Q. Were there many or few?
A. Quite some. Pretty near twenty.
Q. And a constant succession of missles, stones and sticks?
A. I didn't say a constant. They were coming in our direction.
Q. You faced a bombardment and kept on going?
A. Yes, sir.
Q. Well, when you got within thirty or forty feet of the track, what happened?
A. They continued throwing stones.
Q. What?
A. They continued throwing stones and shooting at us.
Q. And did you stop there when you were within thirty or forty feet of the track, or go on?
A. We went right over, because the train had come in.
Q. You went right over to the train?
A. Yes, sir.
Q. Were they still firing at you?
A. The train had come in and kind of covered us, from some of them.

Q. They kept up firing until the train came in and covered you?

A. Yes, sir.

Q. How many were with you going through that danger zone?

A. I really can't tell you how many I said a while ago.

Q. Did any of them get hit with missles?

A. Yes, sir.

Q. Some of them did get hit?

A Yes, sir.

Q. With bullets?

A. I don't know what they got struck with; some of the men got struck.

Q. Some of them got struck?

A. Yes.

Q. Who?

A. Mullen for one.

Q. Yes.

A. I believe others that told me they were struck.

Q. Who were they told you?

A. Wallace is one?

Q. Who else.

A. There were others, but I can't recall them.

Q. Who were they?

A. I can't recall; they are not here among these men in the court room now.

Q. If they were you would recall them?

A. Yes, sir.

Q. Where are the men who were hit you can't recall?

MR. McCARTER: I object.

A. I don't know.

Q. Over in the jail?

MR. McCARTER: I object.

A I don't know.

Q. When you got protected by the train, what did you do?

A. Why the people got off the train.

Q. Who got off?

A. The office men who came on the train.

Q. Who, tell us?

A. I don't know their names.

Q How many of them?

A. Three or four.

Q. Three or four got off?

A. Probably more.

Q. You don't know any of them?

A. I know them, but I don't know their names.

Q. Are they here?

A. No, sir, not to my knowledge.

Q. Have you seen them since?

A. No, sir.

Q. Well, when they got off, where were you?

A. At the steps of the train.

Q. What were you doing there?

A. Waiting there to guard these men to protect them from the mob.

Q. Where was the mob when these men got off the steps?

A. On the other side of the train, and on the ends of the train.

Q. What steps did these three, four or five men get off?

A. They got off two different parts of the train, I believe it was between the second and third car and the first and second, as clearly as I could remember.

Q. They got off, and what did you do?

A. Escorted them to the plant, to the office.

Q Escorted them?

A. Yes, sir

Q. That is to say you went over with them?
A. Yes, sir.
Q. Why?
A. To protect them from the mob.
Q. Was the mob after them?
A. They were after us all.
Q. After all of you. Did they keep on firing stones and sticks and bullets at you, while you were escorting these men back?
A. That I can't say, because my back was turned to the mob at that time.
Q. With your back towards them you can't say whether they kept firing at you with sticks and stones and bullets?
A. No, sir.
Q. Did you hear any whistling around you?
A. I couldn't hear bullets. I could hear shot.
Q. You could hear shots whistling around you?
A. Yes, sir.
Q. Where were you taking—when you were taking the men back to the factory?
A. Yes, sir.
Q. And with the train between you and the users of these guns you still heard shots?
A. I don't know whether the train was there at that time or not.
Q. You don't know whether the train had gone out and they got a clean sweep at you?
A. It might have.
Q. And did they keep bombarding you with sticks and stones until you got these men safely to the factory?
A. There was shooting going on and I heard stones dropping, but I can't testify who was doing any of it, because my back was towards the train.

Y. You didn't look around to see who was doing any of that?

A. No, sir.

Q. As you were taking these gentlemen back safely to the factory, were these missles falling around you, or bullets flying, did either of you or these four or five gentlemen run or walk?

A. We walked very rapidly.

Q. Did you run?

A. It was between a walk and a run.

Q. Did you have your revolver with you all the time?

A. Yes, sir.

Q. I don't suppose you attempted to use it?

A. No, sir.

Q. Why?

A. I wasn't in close enough for to use it.

Q. You know the prosecutor sitting here, don't you, Mr. Florance?

A. I saw the gentleman upstairs.

Q. On the 19th of January 1915, did you make a statement to him?

A. I did.

Q. And sign it?

A. I did.

Q. And read it?

A. I did.

Q. And had it read to you?

A. I don't know having it read to me. I read it, and I understood the thing.

Q. You signed it?

A. I signed it.

Q. Did it contain the truth?

A. Well, why yes, I told the truth.

A. I wouldn't have signed if it it wasn't true.

Q. You are excessively punctillous about being gracious in everything you do.

MR. McCARTER: We object to the question.

A. Not any more than some people I know.

THE COURT: I overrule that question.

Q. Just take a look at that and see if that is your signature. Look at the signature?

A. I would like to read it also. Yes.

Q. That is correct, is it?

MR. WESCOTT: I shall offer that.

MR. McCARTER: Let me look at it.

THE COURT: Anything further?

MR. WESCOTT: Yes, your Honor.

Q. You have said you didn't fire that pistol at all that day?

A. I said that.

Q. Did any of the deputies return the fire?

A. I heard they did.

Q. You heard they did?

A. Yes.

Q. Did you go over to remove the obstacles from the tracks?

A. That was one of the ideas of going over.

Q. Why didn't you tell Mr. Florance that?

A. That I went over to remove the—

Q. Yes.

A. I believe I did tell him in that statement.

Q. Why didn't you tell him that was one of your ideas, that what you went over principally for was to escort these men from the train?

A. That was in my line of duty to remove these ties and protect these people.

Q. Was it a part of your duty to protect the railroad plant too?

A. As a deputy sheriff of the County of Middlesex, I considered it my duty to protect each

and every citizen, and all property within that county.

Q. And what is the reason you went there? To protect citizens and property.

A. Yes, sir.

Q. Did you go over there to protect any of these strikers?

A. Why by the looks of things they were able to protect themselves.

Y. Able to protect themselves.

A. Yes, sir.

Q. Did you as deputy sheriff go there to protect them?

A. On this day?

Q. Yes.

A. There was no occasion to protect them. There was no one assaulting them at the time they started the figth.

A. Did you hear of anybody assaulting them and killing two and wounding twenty others?

MR. McCARTER: I object to that.

THE COURT: That was afterwards, wasn't it; I will overrule it.

MR. WESCOTT: All right, that is all.

THE COURT: Did you go out there under any orders from anybody, or of your own motion. Just answer quietly.

A. I went out of my own motion.

THE COURT: That is all.

REDIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Bavier, subsequent to this shooting, you were arrested, weren't you?

A. Yes, sir.

Q. And you gave bail here for the sum of $2,000?

A. Yes, sir.

Q. And you were arrested on a charge of man-

A. Yes, sir.

slaughter?

Q. And you were re-arrested subsequent?

A. Yes, sir.

Q. A few days after and charged with murder?

A. Yes, sir.

Q. At the time of your first arrest, state whether or not you came here of your own volition?

Mr. COAN: I object.

A. I did.

THE COURT: I will allow the question.

A. I did.

Q. And after you had given bail bond were discharged, you went back to the plant?

A. I did.

Q. Why did you give a wrong address in Paterson, when in fact you lived in Bayonne?

A. My object in giving that address was that I didn't want my folks annoyed by people running to the house asking questions and giving unnecessary trouble to them.

RECROSS EXAMINATION:

By MR. WESCOTT:

Q. Have you ever been arrested before?
A. No, sir.
MR. McCARTER: Does your Honor think that is a proper question. Nobody knows better than the attorney general that isn't a proper question.

THE COURT: The question ought to be, ever been convicted.

Q. Did you give your address to the sheriff?
A. The sheriff had my address. Mr. O'Brien had my address
Q What address was that?
A. My Bayonne address.

At this point statement of James Bavier, signed by him, was admitted in evidence and marked No. 14-P. It read as follows:)

"James Bavier, says: "I am one of the deputies on duty at the Williams & Clark plant; about eight o'clock this morning we noticed a crowd of men marching down the track for Carteret. When they were about opposite the plant they had sticks and pieces of iron. They halted and commenced to yell and call names at deputies. After a short time they began to fire off revolvers in the direction of the plant. At the firing, the deputies were on this side of the track near plant; previous to firing shots, they piled up ties and part of telegraph poles on track. We attempted to go over and take the ties off; that was the time they fired again. They were also on the train when it came in. After we were shot at, some of

the deputies returned the fire. They shot over the mark as far as I could see more to intimidate them than to injure. I had a revolver, I did not shoot. I saw none of the mob fall. After that police office No. 3 came over with man representing himself as road commissioner, and started to argue with us. Policeman No. 3 said F. the sheriff.

Dated January 19, 1915.

JAMES BAVIER."

SAMUEL J. MASON, recalled, further testified:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Mason, the tracing which has just been put on the blackboard, what does that tracing represent?

A. The tracing represents a similar map as the one to the left, with the exception that it shows the building inside of the fence on the Williams & Clark plant.

Q. Do you know of your own knowledge about how far the Carteret station is from this station?

A. No, I do not.

Q. Now what is the large building there?

A. The large building shown on the right of the map is one of the main factory buildings in the Williams & Clark plant.

Q. And is a gate shown there?

A. Yes, sir.

Q. Where?

A. The gate is shown on the office building.

Q. Is there any other gate there?

A. There is a railroad gate.

Q. Where?

A. South of the larger gate, also south of the office. Take a look at the road leaving the plant. This is west. The second road, and I ask you whether there is a gate there?

A. There is a gate where the railroad leaves the plant.

Q. Point to it?

A. In the center of the map.

Q. Another gate,—any other gate?

A. There is a gate to the north on another railroad spur marked 14 foot gate.

MR. STRICKER: That is all.

MR. WESCOTT: That is all. We haven't any questions.

MR. STRICKER: We offer that map?

THE COURT: No objection, is there? The map will be marked.

(Map admitted in evidence and marked Exhibit 3-A for the defendant.)

EDWARD DWYER, was produced as a witness on behalf of defendants, and having been duly sworn according to law, on oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Where do you live, Mr. Dwyer?
A. New Brunswick, 75 Sicard street.
Q. Do you remember one day last winter going down to Roosevelt with Mr. Oliver?
A. Yes, sir.
Q. Do you know what you were going for?
A. Yes, sir.
Q. To take statements of people?
A. Yes, sir.
Q. Do you remember seeing Edward Colon, the young lad?
A. Yes, sir.
Q. Do you remember where you saw him?
A. Yes, sir.
Q. Where?
A. In the office of the Williams & Clark plant.
Q. Who was present when you saw him—did you talk with him, was there a talk with him in your presence?
A. Yes, sir.
Q. Between whom—who did the talking?
A. Mr. Oliver did the talking, told him who he was, and what he was there for.
Q. Yes; and did Edward give any statement of his information on the subject?
A. Yes, sir.
Q. Now I show you this statement which has been marked Exhibit D-2. Please look at it and tell us in whose handwriting is the body of that statement?

A. The body of that statement is in my handwriting.

Q. Yes. And how did you get the information to write what you did write there?

A. Why Mr. Oliver told Conlon to give his statement out in long hand right on this paper, this sheet of paper.

Q. And the statement you wrote on there was—you got the information from whom?

A. Conlon, Edward Conlon.

Q. Did you write is just as he gave it to you?

A. Yes, sir.

Q. Who signed the document?

A. Edward Conlon.

Q. Do you know whether or not the document was read over to him, after it was completed, and before or after he signed it?

A. It was read over to him after it was completed.

Q. And before he signed it?

A. Yes, sir.

Q. And then he signed it?

A. Yes, sir.

Q. Did he make any criticism of it at all?

A. No, sir, he said that was just as he saw the incident.

Q. I see that the document was sworn to. Did you see a notary come in and take the affidavit?

A. Yes.

Q. Was he there while the paper was being prepared?

A. That I couldn't say, as I was busy.

Q. You don't remember about that, about how long a time do you think was consumed in the ceremony you have described?

A. Between twenty and twenty-five minutes.

Q. Did you write anything on that statement, other than what Edward Conlon said to write?

A. No, sir.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. You are a stenographer, are you not?

A. Yes, sir.

Q. Did you take anything down stenographically?

A. No, sir.

Q. Not a thing?

A. No, sir.

Q. You went there to get a statement from young Conlon, didn't you?

A. Yes, sir.

Q. And you were careful to read it to him after you wrote it?

A. Yes, sir.

Q. He read it?

A. I for one read it myself.

Q. Did anybody else read it to him?

A. Mr. Oliver read it.

Q. That is to say it was read to him twice?

A. Twice to my memory, yes, sir.

Q. And that was to be sure he understood it?

A. Yes, sir.

Q. Did you read it first or did Conlon read it first, or did Oliver read it first?

A. Well, that I couldn't say, but I think I read it first.

Q. Well, you read it first and then Conlon read it, or Oliver read it. Did you give it to Conlon to read?

A. Yes, he was given the paper.

Q. Did he read it?

A. Well, he had it in his hand; I don't know whether he read it or not.

Q. Well, now, let us see. How long did he have it in his hand?

A. Well, long enough to read it.

Q. Long enough to read it. How long did it take you to read it.

A. Well, it wouldn't take me over—

Q. Just read it as rapidly as you can.

A. Aloud?

Q. Yes.

A. (Reading Exhibit No. 2).

"I identified eleven of the deputies in the county jail. I saw these 11 deputies who did the shooting. I don't know whether the deputies of the strikers did the shooting. I couldn't identify one of the eleven as having fired a shot. I didn't hear a single shot. I heard them all at once. I could see the smoke going up in the air. I saw some of the strikers with clubs, iron pipe and sticks. I don't know who fired the first shot.

EDWARD CONLON,

Subscribed and sworn to before me the 3rd day of March, 1915,

WILLIS B. KELLER,

Notary Public."

Q. How long did it take Ed to read it?

A. Well, I should think he had the paper in his hands from three to five minutes.

Q. Have you any idea how long it took Oliver to read it?

A. No, sir, I couldn't say.

Q. Did Oliver ask him any questions?

A. No, sir.

Q. Oliver didn't ask him any questions?

A. He just told him to tell it as he saw it.

Q. Exactly; to tell what he saw.

A. To tell how the strikers came out of the Williams & Clark plant, about the strikers out there and the deputies, how they came out

Q. And that is all Oliver said to him?

A. That is all to my memory, yes, sir.

Q. And you didn't converse with him?

A. No, sir.

Q Now Oliver said that to him as you just repeated? and Conlon opened his mouth and began to talk, and answer that question, didn't he?

A. Yes, sir.

Q. And you took it down as talk?

A. As talk, yes, sir.

Q. Exactly in the language he used?

A. Yes, sir.

Q. And that was all of the ceremony?

A. That was all until we finished, and then Mr. Oliver got this notary to take his affidavit.

Q. And the whole of it occupied about 25 minutes time?

A. Yes, sir.

MR. WESCOTT: That is all.

By MR. McCARTER:

Q. I show you this typewritten copy—the paper that has been referred to; did you typewrite that later on, and if so, where?

A. Yes, sir, I wrote that right in New Brunswick in the National Bank Building.

Q. After you returned to New Brunswick?

A. After I returned to New Brunswick.

MR. McCARTER: That is all.

By MR. WESCOTT:

Q. After you wrote this as Conlon repeated it,

or uttered it, did he stop right there at the end of the last sentence?

A. Well, he stopped as though he didn't know what else to say, yes, sir.

Q. And he never said another word?

A. Not in reference to that, no, sir.

Q. And Oliver didn't say another word to him?

A. That I couldn't say either.

Q. Well, but you were there?

A. I know, but I was busy reading my writing over, to make sure it was right.

Q. So you can't tell then because you were so busy, whether anything else was said or not?

A. With regard to that I cannot.

Q. Oliver was perfectly satisfied with what he got, wasn't he?

A. Yes, sir.

Q. And did you and Oliver go away together?

A. We did.

Q Where did you go?

A. We went to the restaurant at Chrome.

Q. Did Oliver say anything about this statement after he got it?

A. No, not to me.

Q. Not a word?

A. No, sir.

Q. He wasn't tickled over it?

A. No, sir.

Q. Didn't say he got a good thing?

A. No, sir.

Q. Put one over on the boy, or anything of that kind?

A. No, sir.

Q. You knew Oliver was a detective?

A. I knew it?

Q. Yes.

A. Oh, sure, I knew it.

Q. And you knew you were going there with a detective?

A. Yes, sir.

Q. To get this statement, if you could, from this boy?

A. Yes, sir.

MR. WESCOTT: That is all.

MR. McCARTER: How many more statements did you get?

A. I got several, I don't know how many I took.

Q. Were you down there more than one occasion?

A. Yes, sir, more than once.

Q. This isn't the only one you got?

A. No, sir.

MR. WESCOTT: When did you get these other statements from Conlon?

MR. McCARTER: No, not from Conlon.

A. No, not from Conlon.

EDWARD CHAMPION, a witness produced on behalf of defendants, being duly sworn according to law, upon oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Champion, you work with whom?

A. American Agricultural Chemical Company.

Q. At which plant?

A I am division superintendent. I haven't any particular place. I have an office in Carteret.

Q. Do you remember the morning of the 19th, that is the day when this shooting occurred up at Williams & Clark's?

A. Yes, sir.

Q. What time did you reach the Liebig plant that morning?

A. About seven o'clock.

Q. Did you come on the seven o'clock train?

A. Yes, sir.

Q. From where?

A. From Elizabeth.

Q. Did the train stop at the usual place that morning?

A. No, sir.

Q. Where did it stop?

A. It stopped about 400 or 500 feet before it reached the station.

Q. Did you find any reason for it stopping there?

A. Why, there was a reason for it, yes.

Q. What was it?

A. Some men had stopped it by flagging it.

THE COURT: Was this the eight o'clock train?

MR. McCARTER: Seven o'clock train at Liebig's, your Honor.

Q. Had there been any obstruction placed across there?

A. I believe there had; yes, sir.

Q. Were you aware of the fact—did you see a crowd of men there?

A. Yes, sir.

Q. How many?

A. Well, there were three or four hundred probably.

Q. Have anything in their hands?

A. Yes.

Q. What?

A. Bricks and stones and sticks.

Q. Did you see them start off towards Williams & Clark?

A. Yes, sir.

Q. Do you know whether any message was sent from the Liebig plant to the Williams & Clark plant of the fact that they had started toward the Williams & Clark plant?

A. No, I don't know if there was any message sent.

Q. Was this obstruction on the track when you got off the train?

A. No. I didn't get off the train until it passed by the station.

Q. Did you see Sheriff Houghton there?

A. I did.

Q. Did you see any of the deputies lined up there?

A. Yes, sir.

Q. Where were they lined up?

A. Well, on the company's property along side of the track between where the train had stopped on the station.

Q. About how far—

THE COURT: This is Liebig's now, isn't it?

MR. McCARTER: This is Liebig's, on the seven o'clock train, just before they went up to Williams & Clark's.

Q. Do you know whether in fact all that property there, other than the mere right of way, is the property of the company?

A. Yes, sir.

MR. McCARTER: That is all. Cross examine.

MR. COAN: No questions.

FRED RICKS, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Ricks, where do you live?
A. Newark.
Q. For whom do you work?
A. The Williams & Clark's.
Q. How long have you worked for them?
A Two years now in July, this coming July.
Q. Do you remember the morning of the 19th of January the day this trouble occurred.
A. Yes, sir.
Q. What time did you arrive there?
A. Around eight o'clock, a few minutes after.
Q. And on that train that gets there about eight?
A. Eight o'clock, yes.
Q. What did you observe?
A. A crowd of people at the station.
Q. Well, go on? Where were the men?
A. At the station, Williams & Clark.
Q. Did you get off the train when it came to a standstill?
A. Yes, sir.
Q. Did you observe anything in the hands of this crowd of men?
A. Yes, sir.
Q. What?
A. Clubs.
Q. Where was this stop that you speak of that you got off the train and observed the men with the clubs?

A. Well, I got up about probably 100 or 150 feet from the station at the crossing.

Q. Did you have any personal trouble with any of the strikers yourself?

A. As soon as I got off one of the men scuffled up to me and told me not to go in. I asked him why. And he said, you know what is the matter in there, he said, you can't go in. I said, why. He said, because you can't, that is why. Well, I said what has that trouble got to do with me. Well, he says, you know, and by that time some of the guards was coming along and drove them fellows back and I walked on.

Q. How many guards were coming up?

A. Two come along the side of the train where I was.

Q. How many men were around you at the time that the two guards came out and drove them off?

A. Four.

Q. Did you see any shooting?

A. Yes, sir.

Q. Did you see any shooting by the strikers?

A. Well, I couldn't say. I didn't know the strikers from the guards. I couldn't tell one from the other. I didn't know the names of any on either side.

Q. Did you see anybody shooting at or towards the deputies or guards?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Where was that?

A. At the track.

Q. Won't you describe the circumstance?

A. Well, at the time the train started to move, after they started up, after I got off, one of the

deputies was at the rear of the train going towards the Consumer's. The train started ahead and he was right after the train. The train pulled out and I saw the deputy and I saw one of the strikers, well, I should say he was 100 yards farther up the track. He would run and take three or four jumps away from the deputy, turn around and throw his hand up like that (indicating), and every time he would throw up his hand I would hear the bullet whistle. Three shots. And then I thought it was time for me to get out of there. I heard the bullet whistle right —and he was shooting directly into this crowd of men of the strikers directly towards them.

Q. Strikers or deputies?

A. He was shooting towards the deputies, and also the strikers. They were all in one bunch, and this man was singled out from the rest, running up towards the Consumer's, and of course, the deputy being on the track at the rear of the train, and the crowd all being in the station, he was shooting in a direct line toward the deputies and also toward his own crowd.

Q. Which side of the train were you on, the east or west?

A. East side. Factory side.

Q. Had you observed all this on the factory side of the train?

A. I did.

Q. Did they all get mixed in together?

A. All mixed together.

Q. Was more than one of the strikers talking to you about you should not go in?

A. All of them talking to me.

Q. Did any of the others who were talking to

you before—did any of the four, one of whom was talking to you, have anything in his hand?

A. Yes, three of them. One that was talking to me didn't, but the other three did.

Q. What did they have?

A. Sticks or pipe, whatever it was. It looked to me like clubs, you might call them. Good sized cudgels.

Q. Do you know whether the deputies or the strikers fired first?

A. I do not.

Q. Did you see any of the deputies fire?

A. Yes.

Q. Did you notice how they fired, which way?

A. Why, I saw one empty his revolver right straight up in the air. Just the full length of his arm up over his head up in the air. And I saw a couple of them with riot guns shoot right at the crowd where I stood, and the strikers.

Q. Perhaps I am ignorant, but I do not exactly know what is meant by a riot gun.

A. Well, a short shotgun, or whatever they call them. They call them riot guns. They are a repeating shotgun.

MR. McCARTER: Well, I believe that is all.

CROSS EXAMINATION:

By MR. STRYKER:

Q. When you got off of the train this morning no one offered any violence to you, did they?

A. No, sir.

Q. Just told you not to go, that was all of it?

A. Yes, sir.

Q. Did this man have a club?

A. No, sir.

Q. Did any one around you have a club?

A. Yes, sir.

Q. Did they say anything to you?

A. Only the one man who was talking to me. The rest wasn't.

Q. He didn't have a club?

A. No, sir.

Q. He didn't threaten you at all?

A. No, sir, no more than I have said.

Q. Who was the deputy who approached you and told you he would help you in?

A. I don't know.

Q. Do you see him here?

A. No, sir.

By THE COURT:

Q. Have you looked at the defendants?

A. I don't see him.

By MR. STRYKER:

Q. Had you been accustomed to being met at the train mornings, every morning by a deputy?

A. No, sir.

Q. Had you ever been met at the train in the morning by a deputy before?

A. No, sir.

Q. This was the first morning then that any deputy had come over to the train to meet you?

A. Yes, sir.

Q. And you always came in on this train?

A. Well, I come on that train at that time, excepting one morning I didn't get off at that station when there was a crowd there. Every other morning there was nobody there.

Q. I didn't ask you about what station you got off at. I ask you if you came in on this train every morning? Was this your regular train?

A. While the strike was going on, yes.

Q. There were a number of other employees of the plant came in on this train?

A. Three of us.

Q. And you never saw any deputies down at the station before?

A. No, sir.

Q. Except on this one occasion?

A. No.

Q. Now, when did you first hear shooting that morning?

A. After I got off the train.

Q. Where did the train stop when you got off of it?

A. Why, it stopped about around 150 feet from the station, the crossing.

Q. Was that the stop before the obstruction was taken off the track?

A. I didn't see any obstruction.

Q. You didn't see any obstruction there?

A. No, sir.

Q. Well, you said you first heard shooting after you got off the train?

A. Yes, sir.

Q. Where did that shooting come from?

A. The head of the train.

Q. Did you see the man who shot?

A. No, sir.

Q. When did you first see anyone shooting?

A. Well, after they chased the fellows away from me, when they started to go down, I seen the shooting. I saw this one particular man shoot ing. He had his hand up in the air with the revolver like that. He aimed the whole five shots right up in the air.

Q. You saw the revolver?

A. I did.

Q. There had been considerable shooting before that, you had heard considerable shooting before that, hadn't you?

A. Some shots, yes. I don't know how many.

Q. How many?

A. I don't know.

Q. Had you seen any of the deputies shooting before that?

A. No, sir.

Q. Do you know Mr. Anthony Silzer?

A. No, sir.

Q. You attended the Grand Jury sessions as a witness, did you not?

A Yes, sir.

THE COURT: Where is that?

MR. STRYKER: The session of the Grand Jury.

A. Here do you mean?

Q. Yes. Last March or February?

A. Yes, sir.

Q. Well, after your being called as a witness. after you were called as a witness before the Grand Jury did you see Mr. Silzer and talk to him about this occurrence?

MR. McCARTER: Where?

MR. STRYKER: At the Prosecutor's office.

A. I might have. I don't know the man's name.

Q. You made a statement to somebody?

A. I made a statement to the man in the Prosecutor's office, yes, sir.

Q. Do you recall whether or not this statement was taken down stenographically?

A. Well, I think it was.

Q. Did you sign it?

A. No, sir. I don't remember now. I say no, sir, but I ain't sure whether I did or not. I might have. I won't say I didn't.

Q. Was the statement read to you after it was taken down?

A. I don't think so. Might have been. No, I know it wasn't down here. It was—I made so many—they had so many statements that I could not tell.

MR. McCARTER: Well, he is talking about the one here in the Prosecutor's office.

A. I don't think so.

Q. Did you in that statement use the following language: "I seen this fellow called Red use the butt of his gun, he had a shotgun, and then said, get out there, get back, and this other fellow he walked right up to him, and he had a revolver and club, he was shooting the revolver in the air, and shooting in the air, and hitting them with his other hand, to push them back." Did you use that language?

A. Something similar to it.

Q. This man Red was a deputy, wasn't he?

A. I think he was.

Q. And this other fellow you were talking about was also a deputy, wasn't he?

A. One of the deputies, yes.

Q. "He was not hitting very hard, he was acting more as if he took it more as a joke. He broke open his gun and asked who has any more pills, and said, there goes Jim on the hind end of the train." Did you say that?

A. Yes, sir.

Q. Who was Jim?

A. One of the deputies.

Q. Was that Bavier?

A. I don't know what his last name was, whether Bavier, or what his last name was.

Q. Did you see Jim here?

A. Yes, he is right there.

Q. Which one?

A. On the first side here.

Q. This man?

A. This man here. That is the fellow they called Jim. I don't know whether he is Bavier or what he is.

MR. McCARTER: That is Bavier.

Q. "And this Jim was on the track at the tail end of the car."

A. Yes.

Q. "The man that told me, passed him, he would look after me." Is that right?

A. Yes, I think so. I think that is right.

Q. Was Jim the man that told you to pass in now?

A. I think it was. I don't know who the other was—what the name of the other fellow was with him.

Q. "He fired his revolver at the fellows running up the track."

A. Yes.

Q. Did you use that language?

A. And the fellow fired at him, yes.

Q. Just answer my question. Did you use that language?

A. I did.

Q. And you meant by that, that Jim fired his revolver at the fellow running up the track?

A. Yes, sir.

Q. "He was running about three jumps, and then he would turn around and throw his hand like that." Did you use that language?

A. I did.

MR. McCARTER: I do not see what this contradicts. I object.

THE COURT: It is not a contradiction that I can see at all. He is merely asking him whether these things are true.

MR. McCARTER: I do not think it is cross examination, and does not contradict anything he said.

THE COURT: I think, Mr. Stryker, it is a great deal better to ask him particularly whether these things did not happen, so that he may testify to them, or deny them.

MR. STRYKER: My recollection is that he denied absolutely before; I asked him some of these questions. I asked him about the identity of the man who said he would see him in, and he denied that he knew him.

A. I didn't see him at that time.

THE COURT: But when he testified in chief for the defence he did not say anything about this man shooting. He said that there was a striker running up the track, who turned around and fired his revolver three times at someone. You can very well inquire further into that matter, without reading all that testimony.

Q. Did you see Jim shoot any more than once at this man who was running up the track?

A. No, sir.

Q. Just once?

A. I seen him shoot once; yes, sir.

Q. What else did you see Jim do?

MR. McCARTER: I object as immaterial and not cross examination.

MR. STRYKER: This is all what happened at this particular time.

THE COURT: I will allow the question. Proceed.

A. Nothing more.

THE COURT: He has said that two or three times.

Q. Did you see the deputies return to the office?

A. Yes, sir.

Q. What did they have with them when they came into the office?

A. Well, they had their sticks and guns.

Q. What kind of guns?

A. Well, what I call riot guns, shot-guns.

Q. How many?

A. Four I seen.

Q. What else?

A. And their sticks, that is all I seen.

Q. Any revolvers?

A. I didn't see any.

MR. STRICKER: I respectfully submit this ought to be limited to the defendants in court.

THE COURT: Why?

MR. STRICKER: We have nothing to do with any of the others.

THE COURT: There is evidence here that these men have all been identified as being of this party. Of course, apparently, it is evident these men did not constitute all of that party, and it is perfectly competent, in my judgment, to prove what any member of that party did when they came back. So I overrule the objection.

Mr. Stricker prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

THE COURT: Certainly. Proceed.

Q. This man who was running down the railroad track that you said you saw shoot in your direction, how many times did he shoot?

A. Three times.

Q. What kind of a weapon did he have?

A. Revolver, I think. As far as I could see.

Q. Do you know?

A. He was about 300 yards from me. I couldn't tell. Something he had in one hand.

Q. What kind of a revolver was it?

A. I couldn't tell you.

Q. Large one?

A. I couldn't tell you.

Q. Did you see any revolver?

A. I couldn't see whether it was a revolver or what it was.

Q. Did you see whether he had any weapon or not?

A. I don't know whether it was a weapon or not. It was something that the bullets whistled after it went off. After he put his hand up I could near the bullets, that is all I know.

Q. You did not see anything in his hand?

A. I could not see that far.

Q. As a matter of fact, you do not know whether the bullets that you heard whistling came from him, or from some one else.

A. No.

Q. You do not know whether they came—

A. He was the only man—it looked to me as though he was throwing them that way.

Q. Just answer the question. You do not know whether they came from behind you or in front of you?

A. Oh, yes; I do.

Q. How do you know?

A. Couldn't hear them whistling behind me, and there was nobody behind me. The factory was behind me on that side.

Q. Do you know Mr. Coan, the Assistant Prosecutor?

A. I have seen him. I don't know what his name is—I didn't know what his name was until yesterday. I heard someone point him out.

Q. Did you make a statement to him as to these occurrences?

A. I did.

Q. When?

A. Down at the office, I think.

Q. On the day of the shooting, the afternoon, or at night?

A. In the evening, I think so, yes.

Q. What time?

A. Some time in the afternoon. I don't know just what time.

Q. In that statement did you say to Mr. Coan, "I heard hollering and shooting, I don't know who did the shooting?"

A. I did.

Q. You used that language?

A. I did.

Q. Was that true?

A. I used that today, too. That is what I have been saying.

Q. And yet you say today that you saw Mr. Bavier shoot and you say you saw this Italian shoot?

A. I didn't say he was an Italian. I don't know what he was.

Q. And that you saw Red shoot?

A. I didn't say anything of the kind. I don't remember saying I saw Red shoot.

Q. Do you say that you didn't?

A. I don't remember saying I seen Red shoot at all.

Q. Did you see Red shoot or didn't you see Red shoot?

A. I did not.

Q. What is that?

A. I did not.

Q. You are sure you did not see Red shoot?

A. I am sure, yes.

Q. What did you see Red do?

A. I seen him hit the fellows over the head with the gun or take the gun up and hit them or push them back.

Q. What fellow did you see him hit and push back?

A. Oh, I don't know. The crowd. Some of the crowd.

Q. And you are sure he did not shoot?

A. I did not see him.

Q. Did he have a revolver, did you say?

A. I don't know.

Q. Now, I call your attention again to this statement made to Mr. Silver, and ask you if you

used this language: "I seen this fellow called Red use the butt of his gun?"

A. No, not the butt of his gun.

Q. "He had a shotgun, and said, get out there, get back, and this other fellow he walked right up to him and he had a revolver and club and he was shooting the revolver."

A. Part of that is what I said, and the other part I don't think I said.

Q. Which part didn't you say?

A. I didn't say he used the butt of his gun. I say I saw him use his gun. But he didn't use the butt of his gun. He used the barrel of his gun. I don't remember saying that other fellow. I didn't see any other fellow walk up to him at all. I don't remember saying that.

Q. Then you did tell Mr. Coan on the morning of the shooting that you didn't know who did the shooting, you used that language?

A. Yes. I told him I didn't know any of the strikers nor any of the deputies. I believe these words I used.

Q. The language you used was, "I didn't know who did the shooting," wasn't it?

A. Well, that is practically the same thing.

Q. "I saw no one fall, don't know if anyone was hit." Did you use that language?

A. Yes, sir.

THE COURT: Mr. Stricker, how does that contradict anything this witness has said?

MR. STRICKER: Well, the last sentence probably does not, but the first sentence does.

THE COURT: Then why take up the time of the Court with the last?

Q. This is your signature, isn't it?

A. Yes, sir.

MR. STRYKER: I ask to have this marked for identification.

A. That is my signature. I signed it at Williams & Clark's office, I think.

Q. That is the statement you gave Mr. Coan, isn't it?

A. This man here.

By THE COURT:

Q. Is that your signature to the statement?

A. That is my signature; yes, sir.

(Statement marked P-14 for identification.)

MR. STRYKER: That is all.

CHARLES R. DEY, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Dey, you reside in the City of New Brunswick?

A. I do.

Q. Were you a member of the December grand jury at the Court of Oyer and Terminer of this county?

A. I was.

Q. Were you one of the gentlemen that inquired into the alleged murder of Alesandro Tessitore?

A. I was.

Q. Who it was alleged was killed at Roosevelt on the 19th day of January last?

A. Yes, sir.

Q. Do you recall among the witnesses called in that case a young man by the name of Edward Conlan?

A. A boy about 16 years old?

Q. Yes, sir?

A. I do.

Q. Do you recall his testimony before the grand jury?

A. Well, partially I should judge. Not his exact words.

Q. Well, do you know whether or not he was asked whether he could identify any of the persons that constituted the deputies at the Roosevelt plant, and who it was charged had killed Alesandro Tessitore, and another person?

MR. COAN: I object to the question.

THE COURT: What is the ground of the objection.

MR. COAN: The ground of the objection is that it is improper for a grand juror to reveal the secrets of a grand jury room, or any of the testimony that was given in the grand jury room.

THE COURT: Well, was this witness asked at all about this?

MR. COAN: No, sir; he was not asked. That is another ground for objection.

THE COURT: That is a better reason. The witness was not asked anything about what he testified in the grand jury room.

MR. STRICKER: He was not. We desire by this witness to—

THE COURT: Mr. Stricker, do not undertake to make a speech to the jury. I understand you are offering this evidence to contradict this witness. And the witness was not asked about it at all. You know as a lawyer, and I know as a Judge, that is not competent. Therefore I overrule it.

Mr. Stricker prays exception.

THE COURT: Certainly.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. COAN: We object to Mr. Lombardy acting as interpreter in this case because of the fact that he is interested and is one of the witnesses for the defence, as we are informed.

THE COURT: Of course, that would be very improper. Get some other interpreter.

MR. COAN: We have another interpreter here who is the official interpreter of Mercer county.

MR. STRICKER: We insist on having Mr. Lombardy here to see—

THE COURT: Who is that?

MR. STRICKER: The gentleman who is alleged is a witness here.

THE COURT: I do not want to have a man act as interpreter who is a witness in the case.

MR. STRICKER: The question is whether he may be permitted to remain in the room while the other interpreter is interpreting.

MR. COAN: We have no objection.

THE COURT: Not if he is a witness. You wanted the witnesses to be excluded, now let them be excluded.

(Vincent Serafini sworn as Interpreter.)

ANTONIO DE ROSA, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

(Through Interpreter Serafini.)

By MR. STRICKER:

Q. Where were you working on the 19th day of January last?

A. I was on a strike.

Q. Where did you go on the morning of the 19th?

A. I arose at eight o'clock and I went in front of Liebig's factory.

Q. When you got to Liebig's factory what did you see there?

A. I saw a large number of strikers who were near the train.

Q. And were you there when the train came in?

A. The train had arrived when I arrived.

Q. Did anybody get off that train?

A. I saw no one.

Q. Did you know a man by the name of Leonard Frescini?

A. I know Frescini, but I did not see him there.

Q. Well, did you see him the night before?

MR. COAN: I object to what happened the night before.

THE COURT: That is overruled.

MR. McCARTER: One moment. We propose to show by this witness, if we can, that on the

evening before a meeting was held of the strikers at which—

MR. WESCOTT: Well, your Honor, I most respectfully—

MR. McCARTER: I will go to the side bar.

THE COURT: I will hear what the offer is. I guess the jury will take the instructions of the court when the time comes.

MR. McCARTER: Certainly. (Continuing)—Frescini spoke, at which there was given out an order that the strikers should proceed to the Williams & Clark plant the next morning, the morning in question, and create the disturbances they subsequently did, and even worse disturbances, occurred. In other words, that the going of this mob or bunch of strikers to the Williams & Clark plant on the morning was the result of a meeting, and that they were ordered to go and to show what they were ordered to do.

THE COURT: That is all?

MR. McCARTER: Yes, sir.

THE COURT: That I overrule.

Mr. McCarter prays exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. STRICKER: That is all, sir.

MR. COAN: No questions.

FRANCESCO COLINI, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

(Through Interpreter Serafini.)

By MR. STRICKER:

Q. Mr. Colini, were you at the station of Williams & Clark on the morning of January 19th?
A. Yes, sir.
Q. Did you see any strikers there?
A. Yes, sir.
Q. Did you see any shooting there?
A. As I was walking towards the station I saw one shot fired from behind.
Q. From where?
A. Behind me while I was walking.
Q. Did you know who fired that shot?
A. There were a few persons there. I couldn't say who it was.
Q. Well, were you on the track then?
A. There it is where I was about 20 steps away from the depot.
Q. Was the train in the station then?
A. It had not arrived yet.
Q. And were there any deputies at the station at that time?
A. Not yet.

MR. STRICKER: Cross examine.

CROSS EXAMINATION:

By MR. COAN:

Q. Where are you employed now?
A. At Liebig's.
Q. How long have you been working at Liebig's?
A. I got my job this morning.
Q. When were you subpoenaed to come here?
A. I had not received any subpoena. I came here of my own free will.
Q. Who paid your expenses here?
A. I paid them.
Q. Who got you this job at Liebig's this morning?
A. No one.
Q. How did you come to get it?
A. I went to the factory and I got the job.
Q. Who told you to go to the factory?
A. My friends and townsmen.
Q. What friends?
A. Those who work there.
Q. Did Mr. Lombardy tell you to go there?
A. I have not spoken to anyone.
MR. COAN: That is all.

RE-DIRECT EXAMINATION:

By MR. STRICKER:

Q. Did you work there before?

A. Yes, sir; three years.

Q. And did you find a good many of the men working there who had worked before the strike?

A. Yes, sir; before.

MR. STRICKER: That is all.

RE-CROSS EXAMINATION:

By MR. COAN:

Q. You were on strike, weren't you?

A. Yes, sir.

Q. And you had not worked at Liebig's from last January up to this morning?

A. No, sir; but it is two years since I worked in Liebig's.

MR. COAN: That is all.

FRED MULLEN, one of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Mullen, where do you live?
A. 339 East 32nd street, New York City.
Q. How long have you lived there?
A. Lived there for the last six months prior to the five months, going on five months, in jail.
Q. Where were you about the 19th day of January last?
A. On the platform of Williams & Clark plant in Roosevelt.
Q. Where had you been before you went to the Clark's plant in Roosevelt?
A. Now, that question put, I don't know what you mean. Where I had been? What date?
Q. Did you come from three hundred and whatever street it was directly to Roosevelt?
A. I was in Newark, New Jersey, that same day I came to Roosevelt.
Q. To where?
A. I come from New York to Newark.
Q. What did you go to Newark for?
A. To look for a situation.
Q. And where did you look for a situation?
A. All over Newark in the undertaking business.
Q. Did you find a situation?
A. No, sir; I did not.
Q. Then what did you do?
A. I was going toward home, to the tunnel, and I walked down Broad street and got in front of Broad and Church, or Orange, Broad and

Orange, and I heard some men talking there, conversing that Jerry O'Brien was hiring Deputy Sheriffs, and I tried to find out where Jerry O'Brien was, and I seen them looking up, and upstairs was Jerry O'Brien's office, and I went up there and I asked him for a job.

Q. Did he give you a job?

A. I didn't see Jerry O'Brien. One of his men asked me if I lived in the State of New Jersey, and I told him yes.

Q. Why did you lie to him?

A. Because I wanted to go to work. That was the only chance I seen to go to work on, and I preferred that lying than I would starvation. I had no work for about five months, and there was nothing coming my way in my business, so I took in that job.

Q. Well, did you get employment by Jerry O'Brien?

A. Yes, sir; by saying I lived in New Jersey.

Q. And as a result, where did you go?

A. I was told to go and get my clothes. How long would it take me to get my clothes.

Q. No, not what you were told. Where did you go?

A. I went back to New York and got my clothes.

Q. Then where did you go?

A. Came out to Newark.

Q. Then where did you go?

A. Went out on a car and went to this plant.

Q. After you got to the plant what happened, if anything?

A. Didn't happen nothing that night.

Q. Well, did you see the Sheriff, or the Sheriff's representative?

A. No, sir. I seen the Sheriff's representative

supposed to be his representative, and he told me the Sheriff would be there in the morning.

Q. Did the Sheriff come in the morning?

A. Yes, sir.

Q. Were you sworn in as a deputy by the Sheriff?

A. Yes, sir; I was.

Q. And after you were sworn as a deputy what did you do?

A. I was put on the front platform on night duty. On the front platform in front of the office.

Q. Can you point out on that plan where the front platform was?

A. Yes, sir; I can.

Q. Will you kindly step over there and indicate?

A. Platform sets right here (indicating). What I mean by that, there was the door that leads upstairs, and here is the office here, and the platform was in front. This is the way I recollect the way the building is situated.

Q. You have not been down there in five months?

A. Not in five months. Close on to five months.

Q. All right. Take your seat, please. Directing your attention to the morning of the 19th of January, state whether or not you heard about a demonstration which had taken place at Liebig's at seven o'clock?

A. Yes, sir; I did hear that.

Q. Did you receive any information that the people who had caused the demonstration at Liebig's were coming to the plant of Williams & Clark?

A. Yes, I heard it and also seen them.

Q. Were you on the platform about the time the eight o'clock train arrived?

A. No, sir; I was not.

Q. Where were you?

A. I was out at the gate.

Q. Could you see the station?

A. Yes, sir; I was zigzag from the station.

Q. What do you mean, you were zigzag?

A. Like that way. Not straight across. That way.

Q. You could see the station?

A. I could see the station.

Q. What did you see at that station, if anything?

A. Well, my work consisted of night duty—

THE COURT: Answer the question. What did you see?

A. I seen a crowd of people coming down to the station.

Q. Were they armed?

A. Yes, sir; they were armed with guns—revolvers, at least, not guns; revolvers and clubs, iron pipes, and also hollering, and was being headed by a leader.

Q. What did you do when you saw that crowd?

A. Didn't do nothing but stayed at my post.

Q. Did you leave that post?

A. No, sir; I did not. Not that present time I didn't.

Q. Did you see the train arrive?

A. Yes, sir; I seen the train arrive.

Q. Just tell us what happened, Mr. Mullen?

A. Well, the night before that I worked—

THE COURT: No. Just that morning.

A. Well, I worked nights into the morning, your Honor. I didn't work days.

Q. (Repeated by stenographer.) That morning about eight o'clock when that train came in?

A. Well, at seven o'clock, quarter past seven, my work consisted of being through, and generally I take the day to myself, at least after a quarter of an hour that morning. I get that quarter of an hour off on the same time that he got, and instead of going to work on the 19th morning, I come out quarter past seven. Therefore I take the quarter of an hour each morning. They were always in the habit of going out and meeting the train.

Q. Just get yourself down to the time about when the train came in?

A. On the morning of the 19th before the train came in there were a crowd of men coming down the track.

Q. You have told us that, and they had sticks and clubs and revolvers?

A. They had sticks, clubs and revolvers. They come as far as that crossing, that crossover.

Q. Which crossing do you mean? Stand up and point it out?

A. Came as far as this crossing, coming down from Carteret. A lot of them stopped here. They straggled from the tool house, getting behind each other, but the biggest body of the men were between here and here (indicating). They have stopped here, and a man named—I know him now, I didn't know him then, directing these men to put on these—

Q. Who was the man who was directing them?

A. Frescini and Yeager.

Q. How did you come to know their names?

A. Through the Prosecuting Attorney of this county.

Q. I see.

A. And they started to tell them what to do. The men that picks up the ties and put them on the track.

Q. Were the ties on the track?

A. Yes, sir; there were ties on the track?

Q. Who placed those ties on the track?

A. A fellow by the name of Morocco, I think, and Loroso. Then Frescini and Yeager picked up a guard rail, what they call a guard rail is a rail from around the side of a track, and they both put that on the track. Morocco, or whatever his name is, he took his red sweater off and put it on the tie, stood it up straight in the air that way.

Q. On a tie or on a pole?

A. Half of a tie that had been split, that has been taken out of the ground in two pieces, looked like. Put that on the tie. I stood over by that gate, as I showed you. Morocco and Frescini and Yeager stepped off one side. Yeager went back and Frescini came toward him with Lorocco. Frescini said something to Red in the Italian language, or what his own language whatever it might have been.

Q. You were near to the track, were you, at that time?

A. I was standing around maybe within fifty feet of the fence. Lorocco came over towards me, but didn't say nothing. Frescini said something to him, and he went in his right hand pocket and pulled a gun and fired three straight shots straight at me, and then fired two more. When I knew his gun was empty I chased him. He ran by Frescini and handed his gun to Yeager. Yeager handed it to another man who went behind the station, and that is the last I saw of the gun. I told Officer Donovan of the gun the same day, and he laughed at me.

Q. Where was the train at that time?

A. The train had not come in yet.

Q. What happened when the train did come in?

A. I couldn't tell you, because I was upstairs bandaging my leg up where I was hit.

Q. What were you hit with?

A. With a big stone, and also a big club, a half a baseball bat was thrown.

Q. Have you any marks that show the places where you were hit at that time?

A. I have, sir.

Q. Will you kindly step down and let the jury see it?

A. There is one, and there is the other (indicating to jury). And Dr. Carroll, of the county, has been serving on me. Dr. Carroll of this county has been waiting on me. That is when I first commenced.

Q. Did you shoot at anybody that day?

A. No, sir; I had no gun.

Q. And were you with anybody that did shoot at that time?

A. No, sir. I was all alone.

Q. And were you one of a number of men who engaged in a fracas at that station that morning with the strikers?

A. I was one of the men who went out of that plant. I was not one of the men that had anything to do with the fracas.

Q. You were arrested on the 19th day of January?

A. I was, sir; yes, sir.

Q. Charged with manslaughter?

A. Yes, sir.

Q. And came to this court house voluntarily?

A. I did.

Q. And gave yourself up?

A. Nobody asked me to come.

Q. And subsequently you were re-arrested on a charge of murder?

A. Yes, sir.

Q. After your first arrest where did you go? Did you come back to the plant?

A. After the first arrest, after I left here?

Q. Yes.

A. Yes, sir; I went back to the plant and resumed duty as Deputy Sheriff. And also there is two men in that plant was not out of that place.

MR. STRICKER: Cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Where were you born and brought up?
A. Born in Boston, November 5th, 1870.
Q. How long have you lived in Boston?
A. Lived in Boston, well, I can't tell you that, because I was very young, and I moved to Cambridge, and lived in Cambridge 25 years.
Q. Massachusetts?
A. Cambridge, Massachusetts.
Q. What did you do there during those 25 years?
A. Went to school until I was 17 years of age.
Q. What did you do during the 25 years that you lived there?
A. There was eight balance of years I worked with my father in the wholesale produce business.
Q. Where?
A. In the eight balance years from the 17 years of age that I left school, I worked with my father in the produce business.
Q. Where, in Cambridge?
A. In Cambridge, Boston, all through the county of Middlesex, Massachusetts.
Q. How old were you when you left there?
A. Left Cambridge?
Q. Yes.
A. Going on 26 years of age.
Q. Where did you go then?
A. Roslyn, British Columbia.
Q. When did you go to British Columbia?
A. When did I go there? When I was 26 years old in September.
Q. How long did you stay there?
A. Stayed there about seven years.

Q. What did you do there?

A. I was a waiter on the floor for a British Columbia music hall, what is called the Roslyn Music Hall.

Q. When did you leave British Columbia?

A. I left there when my cousin left there and put up a theatre down in Spokane, Washington, seven years after that. When he left there I left.

Q. When was that?

A. Well, I should judge that I was about 35 years old. I should judge that was about the year 1905.

Q. 1905 you left British Columbia?

A. Yes, sir; I left British Columbia.

Q. Where did you go then?

A. Spokane, Washington.

Q. How long did you stay there?

A. Couple of years or over.

Q. What did you do then?

A. Done the same thing over there. Attend bar—I mean, wait on table.

Q. When did you leave Spokane, Washington?

A. Well, I left there a couple of years after I was there. Probably about 1907 or 1908.

Q. Where did you go then?

A. Well, I came back east.

Q. Where?

A. Cambridge, Massachusetts.

Q. How long did you stay there?

A. A year.

Q. What did you do there?

A. Done nothing.

Q. And then where did you go from there?

A. Back to New York City.

Q. New York City?

A. New York City.

Q. When did you go to New York City?

A. Back to New York City a year ago last February.

Q. How long did you stay there?

A. Ever since.

Q. What did you do there?

A. I worked in the undertaking business when I got a job. When I didn't get a job I done anything I could possibly get.

Q. Where did you live in New York during that year?

A. 339 East 32nd street.

Q. Lived there all the time?

A. Most of the time, yes, sir. Most of the time that I was in town, that I wasn't working for somebody on the outskirts, or outside.

Q. Did you live anywhere else in New York?

A. No, sir; I never lived anywhere else in New York.

Q. When you gave bail here you gave your address as 444 High street, Newark?

A. Yes, sir; I did.

Q. That was not correct, was it?

A. No, sir; it was not. I told you it wasn't correct when I first answered.

Q. Why did you give that name or address?

A. To hold the job.

Q. In order to get hold of a job?

A. Not to get a hold of it. To hold it. I had the job by that time.

Q. You had the job, and you gave that address in order to hold the job?

A. To hold the job; yes, sir.

Q. Had you ever been in that sort of business before?

A. What sort?

Q. Have you ever been in that sore of business before?

A. In what sort of business?

Q. Same that you are engaged in here?

A. I take any job when I am not working, sir, that is—

THE COURT: Answer the question.

A. Yes, sir; I have been in this business before.

A. Where at? New York City. Also in—

Q. In what strikes were you engaged in New York City?

A. Never was in no strikes in New York City.

Q. Well, as a guard?

A. Never was no guard in New York City.

Q. Well, when you say you have been in this same business that you were in on the 19th of January—

A. All right, sir.

Q. (Continued)—where were you in that same business?

A. In Brooklyn.

Q. In connection with what strike?

A. In connection with the B. R. T., Eastern District Terminal.

Q. Any other?

A. No, sir.

Q. Where else besides New York were you a strikebreaker?

A. Never was a strikebreaker.

Q. Well, a guard?

A. A guard, nowheres.

Q. Well, when or what other places were you engaged in this sort of business?

A. No other place except New York City in that kind of work.

Q. Were you known in New York or Brooklyn as Blackie Mullen?

A. No, sir; I am not known as Blackie Mullen.

Q. Did you serve a term of five years in Joliet Penitentiary?

A. In where?

Q. Joliet?

A. No, I never served a day in my life excepting in the county of Middlesex.

By MR. STRICKER:

Q. You mean on the present charge?

A. On the present charge; yes, sir.

By MR. WESCOTT:

Q. When you were sworn in was others sworn in with you?

A. They were.

Q. Were you furnished a revolver?

A. No, sir; I was not.

Q. Did you have one?

A. No, sir; I did not.

Q. Never had a revolver while you were there?

A. No, sir; never had a revolver or anything else while I was there excepting a night stick.

Q. You were not furnished one when you were sworn in?

A. Sir?

Q. (Question repeated by stenographer.)

A. No, sir.

Q. You were on this platform, as I understand, on the 19th of January?

A. Yes, sir. Before seven o'clock in the morning I went—

Q. How long did you stay on the platform?

A. Until seven o'clock in the morning.

Q. And then where did you go?

A. Out to the gate.

Q. What gate?

A. Out to the big gate.

Q. In front of the office?

A. No, sir. On the side of the gate—side of the plant.

Q. Where did you go from there?

A. Didn't go nowheres except go back into the room again where I was sleeping.

Q. You went back in the room to sleep?

A. Where I was sleeping. Where we generally sleep.

Q. Had you been sleeping there before you went out to the gate that morning?

A. Why, no. I just got off duty.

Q. How long did you stay in that room there?

A. What do you mean how long I stayed there? What time of the day do you mean?

Q. You got off duty at what time?

A. Quarter past seven.

Q. Then you were entitled to go to sleep, weren't you?

A. Yes, sir. If I wanted to.

Q. Where did you go when you got off duty?

A. Where did I go? Down to get something to eat, down to the cook house, down to the restaurant.

Q. How long did it take you to get something to eat?

A. Oh, about half an hour or three quarters.

Q. That made it what time?

A. About quarter past eight, I should judge.

Q. Then where did you go?

A. Well, that was quarter past nine. Excuse me.

Q. Well, you got through your breakfast quarter past nine then?

A. Yes. No, quarter past eight. I was right. Quarter past eight.

Q. Quarter past eight you got through your breakfast?

A. Yes, sir.

Q. Where did you go then?

A. I went back to the office and went upstairs and sat down.

Q. How long did you stay there?

A. I stayed there until I could get some medicine to put on my leg.

Q. Well, that was how long?

A. Well, that was about two hours and a half waiting to get it.

Q. After the two hours and a half were up where did you go?

A. Went to bed.

Q. And stayed in bed all the rest of the day?

A. Yes, until I was called down?

Q. When were you called down?

A. When the people came there, the Prosecutor and Mr. Coan, and a few more of them come there in the afternoon.

Q. When was that?

A. In the afternoon.

Q. You stayed in bed until the afternoon when the Prosecutor came there?

A. Yes, sir.

Q. Then you were not out of the yard at all?

A. Yes, sir; I went out in the yard.

Q. When were you out in the yard?

A. At the time of the trouble was happening.

Q. Oh.

A. I have told you that I was outside of the gate.

Q. Then you did get outside of the gate?

A. Yes, I told you I was outside of the gate.

Q. What time did you go outside of the gate?

A. Between seven and quarter past seven.

Q. Before you got your breakfast?

A. Yes, sir.

Q. How long were you outside of the gate?

A. About until I got hurt. That is as long as I stayed there.

Q. How long were you outside of the gate?

A. Well, I should judge I waited there about 12 or 15 or 20 minutes.

Q. What were you doing outside of the gate?

A. Guarding the big gate, so nobody could get in there or leave as I always have done since the 7th day of January.

Q. Was there anybody around there outside?

A. Not on that gate; no, sir.

Q. Did you see any deputies around there?

A. Yes, I seen deputies around there. Always have seen deputies around there.

Q. When were they when you were guarding the gate?

A. Inside of the plant.

Q. What were they doing inside of the plant?

A. Guarding the different parts of the yard.

Q. Different parts of the yard?

A. Yes, sir; different parts of the plant.

Q. How big is the yard?

A. I never measured the yard. The yard covers quite a large piece of ground. In my estimation, as far as I seen of it.

Q. How many acres?

A. Oh, now; I am no judge of land. I couldn't tell you if it was one acre or one quarter of an acre or ten acres.

Q. And these other fellows were inside guarding the—

A. Guarding all over the plant.

Q. How many of them?

A. I don't know whether they had a thousand

there or they had ten there. I know they never went away from the office.

Q. You do not know whether they had a thousand or whether they had ten?

A. No, sir; I do not.

Q. Where did you deputies stay, in the office?

A. What is that?

Q. Stay in the office building?

A. Did I stay in the office building?

Q. Yes?

A. While on duty?

Q. When you slept and ate?

A. No, sir; we slept upstairs, part of us.

Q. In the office building?

A. In the office building; yes, sir.

Q. And where did you eat?

A. Where did I sleep?

Q. Where did you eat?

A. Ate down in the dining-room.

Q. In the office building?

A. No, sir; down in the yard.

Q. Did they all eat there?

A. They all ate there at certain times, different times; night men and day men had different hours.

Q. Did you ever see all the deputies together?

A. No, sir; I did not.

Q. Did you ever see half of them together?

A. No, sir; I don't think I saw half of them.

Q. Did you ever see ten of them together?

A. Yes, sir; I have seen—wait a moment, please. (Continued)—I have seen eight, nine together.

Q. That is all you saw when you were there?

A. All I ever did see together, excepting at eating times, and I didn't wait much to see, because they were zigzagging in and out.

Q. When did you see nine together?

A. At seven o'clock at night, and seven o'clock in the morning.

Q. Who were those nine that you saw at seven o'clock in the morning together?

A. Men who was on the front platform. I don't know their names. They were all strangers to me. The men worked on the office were the same nine men.

Q. You don't know any of them?

A. I am trying to tell you if you will just wait and give me a chance.

Q. I will give you all the chance in the world.

A. Thank you.

Q. You don't know any of them?

A. Yes, sir. I am telling you the same nine men worked in the office, are the same nine men that Conlan picked out.

Q. They are the same ones Eddie Conlan picked out?

A. Yes, sir.

Q. Well, what are their names?

A. Well, my name is Mullen.

Q. Yes.

A. And I did work—I did relieve Mr. Williams. But the others I don't know who their names were, or nothing else. That is all I do—

Q. Do you know the names of these men here yet?

A. I know one man was there was at the office when I went in.

MR. McCARTER: Listen to the question.

Q. Do you know the names of these men here?

A. I do by this time; yes, sir.

Q. Where did you get acquainted with them?

A. In the Brunswick jail.

Q. Never knew them before?
A. Never knew their names; no, sir.
Q. Have you ever seen them before?
A. No, sir; not until I was on this job.
Q. Did you ever see any of these nine or ten men here before you saw them in the jail?
A. Yes, sir.
Q. Where?
A. Around the plant.
Q. Did you ever see any more than these ten there on the plant?

MR. McCARTER: I object.

Q. That you knew?

THE COURT: I do not hear the objection.

MR. McCARTER: I understood that your Honor ruled that those disconnected with these ten were not material.

THE COURT: He is now merely asking whether he saw any more. He is not undertaking to identify them yet. I will allow that question.

A. Yes, I seen other guards.
Q. That you knew?
A. No, sir.
Q. That you could recognize?
A. No, sir; I don't suppose I could recognize them except being in jail. I could recognize the men that is with me, but outside of that I could not.
Q. Before you got in jail there were only two or three deputies down there that you either knew or could recognize?
A. Yes, sir; about two or three that I could honestly say I could recognize and call.
Q. That is all you got acquainted with during this time—

THE COURT: Mr. Attorney General, he does not say—he said, "and call." He did not say he did not recognize their faces. He says that of these men there are only three or four that he can call by name.

Q. Were there more than three or four that you could recognize without calling them by name?

MR. McCARTER: He has already said he could recognize nine.

THE COURT: Let him answer the question.

MR. McCARTER: I do not see any use going over the whole thing.

Q. (Question repeated by the stenographer)?

A. No, sir; not as I could say I could pick them out personally, no, sir; I could not.

Q. How long were you there with these deputies in this plant?

A. Well, I was there 14 nights and 14 days. I slept at day and worked all night, so I didn't have much chance to see anybody except the man I worked with nights.

Q. Who were the men you worked with at night?

A. Mr. Bavier.

Q. Anybody else?

A. No, sir. He was my partner.

Q. He is the only one that you could recognize?

A. Only man that I could recognize and call by name.

Q. About how many did you eat with every day?

A. One or two.

Q. Only one or two?

A. Yes, sir. Sometimes three at the last. I very seldom ate in the dining-room.

Q. Where did you eat?
A. In the kitchen with the cook.
Q. Who was the cook?
A. Walter Batterson.
Q. Was he a deputy?
A. Yes, sir; he is a deputy. No, sir; I beg your pardon, he is a cook.
Q. Is he a deputy?
A. No, sir; not as I know of.
Q. Let us see now, there was a time when you went out of the gate, as I understand?
A. Sir?
Q. There was a time when you went out of the gate that morning?
A. There was a time I went out of the gate?
Q. Yes.
A. Yes, sir; between seven and quarter past I went out of the gate, about three or four minutes past seven.
Q. Why did you go out of the gate?
A. Because I always have done it since the sixth of January.
Q. Why did you go out of the gate on that morning?
A. The same as every other morning, to protect the gate from letting people enter or leave.
Q. Wasn't your time up?
A. No, sir; not until quarter past seven.
Q. And you were out of the gate at seven?
A. Yes, about four or five minutes past seven.
Q. Four or five minutes past seven. And you waited until quarter past, and then you went back because your time was up?
A. No, sir; I did not go back that morning.
Q. Why not?
A. Because I didn't get nobody to relieve me. I had to stay there.

Q. How long did you stay there?
A. Until I got hurt.
Q. Who told you to stay there?
A. Myself.
Q. And you would have stayed there how long if you hadn't got hurt?
A. I would have stayed there until I got relieved.
Q. Well, you relieved yourself because you got hurt?
A. Yes, sir; I relieved myself when I wasn't able to protect the gate. Gate might as well be alone as be unprotected.
Q. Did the gate need protection at that time?
A. Yes, sir; every morning it needed protection.
Q. Against what?
A. Against everybody from entering that gate.
Q. Against the strikers, wasn't it?
A. Everybody, employes and strikers both, and also deputies.
Q. You would not even let the deputies in?
A. No, sir.
Q. Well, where were you when you got hurt?
A. Within fifty feet of the front of the gate.
Q. Was there anybody with you?
A. No, sir; these three times I told you there was nobody with me.
Q. You were out there alone?
A. All alone.
Q. Within fifty feet of the gate?
A. Fifty feet, on the road, right on the company's road of the gate.
Q. And while you were out there alone, you got hurt how?
A. By a man by the name of Loroso.
Q. Did you know him at the time?

A. I told you I didn't know him until Prosecutor Florance told me who he was.

Q. When did the Prosecutor tell you who he was?

A. On the 10th day of April, in the grand jury room. 10th or 11th day of April, I think.

Q. Are you sure of that?

A. Well, I won't swear to the exact date, but it was in the grand jury room he told me.

Q. Point out the man who told you?

A. This gentleman right here, I think (indicating Mr. Florance).

Q. He told you what then?

A. His name was Lorso.

Q. What else did he tell you?

A. In the court room?

Q. Yes. In the grand jury room or any other place, what did he tell you?

A. Well, he was asking me different questions about this.

Q. No. What did he tell you? What did the Prosecutor tell you?

A. He told me—he asked me why didn't I shoot the man when he fired shots at me, and I turned around and told him I had no gun.

Q. What did he tell you before that?

A. Before what?

Q. When he asked you the question why you didn't shoot the man?

A. He asked me if I could describe the man that fired the shots.

Q. Yes.

A. And I told him yes, sir. He said describe him. I described him. Turned around and said his name was Lorso. That is all of that argument, excepting saying, why didn't you shoot that man yourself, and I turned around and told him I had

no gun. There were 24 men in there beside myself and him.

Q. And you told him—

A. I think it was him. If it wasn't him I think it was Mr. Coan. Whatever the Prosecuting Attorney was. But I think it was Mr. Florance.

Q. Mr. Florance?

A. I am perfectly sure it was Mr. Florance.

Q. You are perfectly sure it was Mr. Florance?

A. Yes, sir; I am perfectly sure.

Q. Was there anything else said between you and Mr. Florance?

A. Oh, yes; lots said at the trial at the grand jury indictments for these men, we had witnesses against them, against Frescini.

Q. Where did this man came from who hurt you?

A. Right from the tracks where they had the ties on.

Q. The ties were already on the track at five minutes after seven?

A. They were put on the track before I went to the gate. That was before seven o'clock.

Q. They were there before five minutes of seven?

A. Well, around seven o'clock, I should judge; yes, sir.

By THE COURT:

Q. You mean at the Williams & Clark station?

A. Yes, sir; I am talking about Williams & Clark plant.

Q. You are quite sure you saw them there, are you?

A. Yes, sir; I know them. I identified the man.

Q. No, I mean the ties.

A. Yes, sir; I seen the ties, and also the guard rail.

By MR. WESCOTT:

Q. What else did you see on the track at five minutes after seven, or seven o'clock that morning?

A. Well, that is all I seen, was the ties.

Q. How many ties?

A. I should judge there were two put on there.

Q. Anything else?

A. A half a telegraph pole.

Q. Two ties and a half a telegraph pole?

A. Yes, sir. And a guard rail I should judge about nine foot long.

Q. A what?

A. A guard rail.

Q. And they were all on the track?

A. Yes, sir; all on the track.

Q. Were there any people there at that time?

A. About four hundred, four or five hundred people I should judge.

Q. What were they doing there?

A. Hollering, brandishing sticks, calling all sorts of nice names.

Q. Give us the nice names?

A. Cock suckers, sons of bitches, and kill the bastards.

Q. What else?

A. Well, that is enough I should judge.

Q. Was there anything else they said?

A. Oh, I don't know what they said in the Italian language, but people who could talk English were talking it out in good and plain English.

Q. Those that could talk English were saying those things?

A. Yes, sir.

Q. I suppose the Italians were saying things that you could not understand?

A. Oh, they might have been telling us we were everything, but we didn't know it.

Q. Why do you say we? I am talking about you?

A. I didn't know it.

Q. You were there?

A. I was there.

Q. Alone?

A. Alone.

Q. Did this fellow Frescini, or whatever you call his name, leave the crowd and come to you?

A. No, sir; he was the leader of the crowd.

Q. He was leading the crowd?

A. Yes, sir.

Q. Well, did the crowd leave the tracks and come across there to where you were at the gate?

A. Only one man came towards me.

Q. Who was that?

A. Loroso, I think his name is. The Prosecutor can tell you his name. He has got it.

Q. Did he leave the crowd behind, or did the crowd follow him?

A. He came with Jaeger and Frescini from the track where the ties were put on.

Q. Then there were three of them came?

A. I told you three left the place where they were standing at the first.

Q. And came over to the gate where you were?

A. No, he did not, sir.

Q. Well, what did they do?

A. I told you they came from there and stopped when they got about 20 feet from the track, towards where I was standing. Frescini took Loroso one side and said something to him; whatever he said was his own language, I do not know,

and I could not see. Frescini had walked about 20 feet more—

Q. You say you did not know and could not see it?

A. No, sir. Loroso had walked about 20 feet or more, probably, or less, towards me, and pulled a gun and fired three straight shots right deliberately at me, fired deliberately at me, because his gun was pointed at me, and nobody else was there.

Q. All right.

A. And then fired two more.

Q. What?

A. And then fired two more. And his gun was empty.

Q. That is five shots?

A. Five shots.

Q. How close to you was he?

A. Well, I should judge he was about the length of this room when he fired the shots.

Q. How far was he from the railroad?

A. Well, I should judge about half way between each other.

Q. About half way between the railroad—

A. And the plant.

Q. And 20 feet from you at the gate where you stood?

A. No, I didn't say 20 feet from the gate. I said from the plant.

Q. Let us take the position. You were about 20 feet from the gate?

A. I was not. I was standing by the gate when I was shot at. I was twenty feet from the gate when I was hit by a stone.

Q. When you were shot at, or shot—

A. I wasn't shot, I was shot at.

Q. You were twenty feet from the gate, or twenty feet from the house, or what?

A. I told you I was standing at the gate when I was shot at. I was 20 feet from the gate when I was hit.

Q. Let us take the shooting first. How far from the gate were you when you were shot?

A. The gate was here and I was there.

Q. You were standing next to the gate?

A. Yes, sir. My back to the gate.

Q. These three men left the crowd as I understand you?

A. Yes, sir.

Q. And they came within the width of this room of you?

A. No, sir. I didn't say them three men came within the length of this room from me.

Q. Well, did one of them?

A. I told you the three walked about twenty feet from the track and stopped.

Q. Didn't you tell us it was about the length of this room from you?

A. I said that was Loroso, was the man that walked that distance alone.

Q. He came alone?

A. Yes, sir.

Q. And left the other two back?

A. The other two went back.

Q. Do you know where that man is?

A. What? I don't know where he is, but I understand he is out on bail.

Q. How close to you was he when he shot?

A. Oh, I should judge about the length of the room.

Q. You stood still?

A. Well, I wasn't going to do nothing else. If

he was going to hit me, he was going to hit me, and I wasn't taking no chances to beat it.

Q. You stood still.

A. I stood still. If he couldn't hit me the first time, he couldn't hit me the next time.

Q. You were looking straight at him?

A. Sure I was looking straight at him?

Q. And he pulled a pistol from his pocket?

A. From his right hand coat pocket.

Q. Pointed it straight at you?

A. I don't think he pointed it at nobody else.

Q. Well, he pointed it straight towards you, didn't he?

A. Straight to me.

Q. Straight to you and he fired three shots?

A. Yes, sir.

Q. You were sitting still?

A. Yes, sir.

Q. Looking at him?

A. I couldn't look at anybody else.

Q. You were looking at him?

A. Yes, sir; looking at him.

Q. When he finished these three shots what did he do?

A. Fired twice after that.

Q. What?

A. Fired twice more after that.

Q. How large a revolver was that, how many barrels?

A. How many barrels? I suppose it had one barrel and five chambers.

Q. Five chambers?

A. That is what I think. That was enough.

Q. You know something about guns?

A. Yes, sir; I do.

Q. And this one was a five chamber revolver?

A. Yes, sir; a five chamber revolver; it must have been.

Q. How much time was there between the first three shots that were fired, and the other two?

A. About ten seconds.

Q. There was an interval between the first three shots—

A. And the last two about ten seconds.

Q. Any between the first three shots?

A. No, they came as quick as the fellow could pull his finger.

Q. Was it pulled back?

A. If I had it I would have it here in evidence. I didn't see it only in front of me.

Q. Was it one of those that had to be cocked every time?

A. I couldn't tell you how it was handled.

Q. Did it have to be cocked every time?

A. If it had to be cocked every time I would have had it before he fired the second shot.

Q. You would what?

A. I would have gone after him before he fired the second shot.

Q. And after the gun was fired what would you do?

A. I would have chased him.

Q. You would have chased him. He fired three shots in quick succession?

A. Yes, sir.

Q. Right at you?

A. Yes, sir.

Q. And then there was an interval of ten seconds when he fired at you again?

A. Yes.

Q. Right at you?

A. Yes, sir.

Q. And didn't hit you either time?

A. No, sir.
Q. You didn't dodge?
A. What was the use of my dodging?
Q. You didn't move?
A. No, sir.
Q. What did he do after firing five shots?
A. He ran.
Q. After he fired the five shots what did you do?
A. I chased him.
Q. How far did you chase him?
A. About twenty feet.
Q. And then what did you do?
A. I went down myself.
Q. You went down yourself, and that is the reason you didn't chase him any further?
A. I couldn't chase him any further. I was hit and he was running.
Q. That is the reason you didn't chase him any further?
A. Yes, that is the reason I didn't chase him any further.
Q. Were there deputies around there?
A. Yes, there were deputies, and they thought when they seen me fall that I was shot.
Q. Where were the deputies?
A. At the corner of the fence.
Q. Did they do anything?
A. No, sir; they didn't.
Q. Well, now, how did you happen to go down?
A. I was hit on the knee first above the knee.
Q. Who hit you above the knee?
A. I don't know whether it was Morocco or Frescini threw the stone, but it came there and I was hit again on the shin.
Q. Well, at the time somebody at least hit you on the knee with a stone?

A. Yes, sir. It was a stone or a half a brick, or one of those pieces of coke like cinders of a coal.

Q. How big?

A. Oh, about that big. It was round, it wasn't flat, it was round. A little clinker on top of a big clinker. That is what it looked like.

Q. How far did the men that hit you throw it?

A. He didn't throw it but about half the length of this room.

Q. You didn't dodge that?

A. I didn't have a chance to dodge it. It hit me.

Q. Why not?

A. I didn't see it coming.

Q. It was so small you couldn't see it?

A. No, it came too quick.

Q. It came so quick, but it didn't come as quick as a bullet, of course?

A. I should say not.

Q. When did you see it first?

A. See what first?

Q. This big thing that hit you on the knee?

A. When it hit me on the knee?

Q. Above the knee?

A. After it hit me.

Q. After it hit you?

A. Yes, sir.

Q. You were down on the ground?

A. No, sir. I was standing up.

Q. It didn't down you?

A. Not down yet; no, sir.

Q. When did you go down?

A. On the next stone that hit me.

Q. On the next. Very well. After the first one hit you before?

A. I looked to see if I could see the man who threw it.

Q. Did you see him?

A. Yes, I surmised who it was. He was further over.

Q. What did you do then?

A. I started to run again.

Q. After him?

A. After the first one; yes, sir.

Q. Then you didn't stop to examine the size of the stone? The stone that hit you first?

A. No, sir; I seen that when I came back. That was enough.

Q. You seen that when you came back. After you got hit by that thing—with this cinder—as big as your head—

A. I didn't tell you as big as my head. I said as big as that. That isn't as big as my head.

Q. I don't know.

A. Well, we will measure it then.

Q. Pretty good sized cinder, wasn't it?

A. Sir?

Q. Pretty good sized cinder, wasn't it?

A. It was big enough to be hit with.

Q. After he hit you with this cinder, you started after him?

A. Yes, sir; I did.

Q. How far did you go?

A. About five feet. Well, I didn't go from here to that post.

Q. Why did you stop?

A. Because I was hit on the shin, and I was down on the shin, I had to go down that time; it was a half a brick.

Q. Hit on the shin?

A. Yes, sir.

Q. With what?

A. Half a brick, they build a house with, a quarter of a brick, a good sized brick. I won't

say a half, it would be exaggerating in the size of the brick.

Q. Who hit you with that?

A. That was Frescini himself.

Q. How do you know?

A. Because I saw him; he done it.

Q. How do you know it was Frescini?

A. Because the man with the scar on his face was identified in the yard as Frescini.

Q. Did you see that brick coming?

A. Well, I couldn't get out of the way of that.

Q. Why?

A. Because it came too quick for me.

Q. That caught you on the instep?

A. No, the middle of the shin, between the knee and the ankle.

Q. Between the knee and the ankle?

A. Yes, sir.

Q. And you went down from that?

A. Yes, sir.

Q. How long did you lie there?

A. I laid there long enough to see if I wasn't hurt bad enough to get up, and I could hardly move when I got up. I had to be helped to get on the platform.

Q. How long did you lie there?

A. I should judge about a half a minute.

Q. That was long enough to see if you got hurt?

A. Long enough to see if I was able to get up.

Q. What?

A. Long enough to see if I was able to get up.

Q. Could you tell whether you could get up, or not, within half a minute?

A. Yes, I tried once, and I wasn't able to move. I had to try again. I thought my leg was broken, I thought it was broken.

Q. You experimented with your leg there for half a minute, and then you came to the conclusion you could get up?

A. I wasn't going to lay there when I had a good place to lay down in.

Q. When you found you could get up and you did get up, what did you do?

A. I went back to the fence, and limped around until I got help to help me in.

Q. Limped around until you got help to help you in?

A. Until I got to the platform.

Q. And who helped you in?

A. Johnnie O'Mara and Mr. McLoughlin.

Q. How did they help you?

A. O'Mara was on the platform and helped me up the stairs. Mr. McLoughlin was coming down the stairs and he helped me upstairs.

Q. How did they help you?

A. Under the arm. McLoughlin took me under the arm and helped me upstairs, and Mr. O'Mara went downstairs to get water, and I said I wasn't shot, and he wanted to see if I wasn't shot. He said he would look, and I asked him what he knew about it, and he said he was a veterinary doctor and would look at it.

Q. Why didn't you tell him you were hit by a brick?

A. He wanted to see if I was shot.

Q. And you couldn't convince him you were hit with a brick?

A. That man couldn't—

Q. Answer the question?

A. Yes, I told him it was a brick, and he got me upstairs, and Mr. O'Mara he was there.

Q. How long were you laid up?

A. I didn't go on duty all that night, that was

Thursday, and Friday I got out of bed, in the afternoon I got out of bed and went back to bed. Friday I stayed in bed all day until I voluntarily came down here to this nice county, to this nice city, or that night, before Judge Daly, and I went back the next day, and laid up a week.

Q. Laid up a week?

A. Yes, sir.

Q. Did you use crutches going around?

A. No, sir. I didn't use crutches going around, I had my meals taken to me.

Q. Weren't you up there in jail three days after this thing occurred?

A. Who, me?

Q. Yes, sir.

A. I laid up I told you, I had my meals taken to me. I didn't say I had my meals taken to me in the plant.

Q. They were taken to you here in jail.

A. I didn't say where it was; you never asked me where it was. I couldn't be there at the factory, for I came down here to the jail on the 22nd, and this thing happened on the 19th.

Q. Did you see any shooting

A. Yes, sir, I heard it and seen it.

Q. Outside of the five shots fired, did you?

A. Yes, sir, more than five shots, more than the five shots coming at me.

Q. The shots you heard first were the five shots fired direct at you?

A. Yes, sir.

Q. How soon after that did you hear any more shooting?

A. After he done firing the five shots, then I started to run directly after that bullet came, not in my direction, but in the direction of Williams & Clark, their office. Directly from the railroad

station directly across the track that way, they were firing shots over that way. The next thing I heard was a regular roar, and that was all there was to it.

Q. How soon after you were hit in the shin and knocked down, and you were speculating or struggling to see whether you could get on your feet, how soon after was it you heard the next shooting?

A. Very shortly after.

Q. How shortly?

A. I should judge, well I couldn't exactly say the time, but it was very shortly, within a few minutes.

Q. Within a few minutes. Where were you when you heard this shooting begin?

A. Up stairs.

Q. In bed?

A. Yes, sir. Not in bed, but I was sitting there.

Q. And deputies there taking care of you?

A. Yes, sir.

Q. You heard the shots fired. Did you look out?

A. I was looking out the window at the time Mr. McLoughlin and Mr. O'Mara were fixing my bed.

Q. You were upstairs?

A. I sat directly in front of the window, directly opposite the station; I could see better than those downstairs, I could see it, I was higher than they were. I was the second story up.

Q. I suppose you saw the crowd from which those shots came?

A. Yes, seen both.

Q. They were where, the railroad?

A. Yes, sir, along the railroad, and along the railroad platform.

Q. And give us your best judgment about the number of shots that came on the railroad?

A. I didn't count any shots except the five shots fired at me.

Q. Do I understand you heard a lot of shots coming from the railroad after you went upstairs and got on the job with two deputies fixing your leg, you looked out the window, and your judgment is that there was a lot of shots coming from the railroad?

A. Yes, sir.

Q. Now about how many of those shots?

A. I didn't count them.

Q. Were there a good many?

A. I couldn't tell whether there was a good many or a few. They were continually firing for three minutes. I couldn't tell you how many shots were fired there during that three minutes.

Q. They continually fired during the three minutes?

A. Yes, sir.

Q. That is the strikers you mean?

A. Strikers and deputies both.

Q. Did the deputies fire at that time?

A. The strikers and deputies both had a pitched battle.

Q. And the strikers were firing at the deputies and the deputies at the strikers, and it was a pitched battle?

A. Yes, sir.

Q. A great number of shots came that way?

A. Yes, sir; probably a good many bullets went the other way.

Q. Those coming towards the factory hit the factory buildings?

A. I didn't go down to look; as a mere fact I never had a chance to see if they struck the building thence or not.

Q. Couldn't you hear them?

A. I could have heard them when they went through our windows.

Q. And you never heard them plugging into the wood?

A. I couldn't, I never had a chance.

Q. Why couldn't you?

A. Because I came down to the county jail too quick to have a look.

Q. Couldn't see how many shots went into the building?

A. Yes, I could if I wasn't lined up in the yard at Liebig's plant and taken down to Middlesex County jail.

Q. Why didn't you ask permission to look at the building.

MR. STRICKER: I object.

THE COURT: His mouth is below Mr. Florance's head, and Mr. Florance's head is between he and me, I can't hear a word.

MR. WESCOTT: I withdraw the question.

Q. Well, how long was this pitched battle kept up?

A. About three minutes, I should judge three or five minutes.

A. That was the end of it as far as I was concerned, or any of the deputies were concerned.

Q. Did you hear any more shooting after this pitched battle?

A. No, sir, I didn't.

Q. And that is all you know about it?

A. That is all I know about it.

Q. You made a statement, didn't you?
A. To who?
Q. About the facts in this case?
A. To who?

THE COURT: Did you make a statement.

A. I made a statement to one man. I would like to know who I made that statement to. I am not going to say that I made a statement to somebody if somebody else got it.

Q. Is that your signature (handing paper to witness)?

A. That is my signature, yes, sir.

Q. Let me read it to you to see if you said it. "Fred Mullen said I work for the O'Brien Detective Agency and I am a deputy at the W. & C. works at Roosevelt, and on January 19, 1915, I was on duty at the office with a number of other deputies about 7.40 in the morning, and I seen a number of strikers over at the station. There was about four or five hundred; there was a number of them had sticks and clubs in their hands and two of them had revolvers in their hands; they were all around the station and road. I seen one man shooting towards the works of the company, one man with a rain coat on had a pick handle in his hand, and as the strikers were about to be—to go away he beat them back, then the man with the rain coat and the man with a red sweater on put two ties on the track and an iron rail; then the fellow with the red sweater put his sweater on a tie, and that he had put in the middle of the track; the strikers were all hollering "Stop the train"; the train then came in about 8 o'clock; then about eight of us deputies went down to the fence of the company. While they were standing there there was two shots fired directly at us. I

seen the strikers have revolvers pointed toward us. Then they started throwing sticks at us; then they started to come on the company property, and we ordered them to get off, and then the man with the rain coat on said, Don't let them drive you, pump it into them; and then there was a number of shots fired by the strikers; we rushed in from the property; then they started to shoot again and some of our men fired up in the air. I didn't see any of our deputies have a revolver. I didn't see any men that were shot. After ten minutes the strikers went away and we returned to the plant.

(Signed) FRED MULLEN."

Q. Is that correct?

A. No, sir.

Q. You didn't make that statement, part of that statement?

A. I made part of that statement; I never said they had no revolvers. I never said they had revolvers. I said I had no revolver.

Q. You say this statement which you signed, isn't true?

A. Not all of it, no, sir.

Q. Do you say that you didn't make the statement in that?

A. Some parts of that I have made.

Q. Do you say you haven't made all of it?

A. No, sir. The man is mistaken in writing.

Q Do you say you didn't say all of it?

A. Yes, sir, I do say I didn't say all of it.

Q. Now that statement was made on the same day of the shooting at the Williams & Clark office, wasn't it?

A. Yes, sir.

Q. And who was present then?

A. I made that statement out to one individual, a man himself.

Q. Were you in bed when you made the statement?

A. I came down. I was called from bed and I came down to make that statement.

Q. Was this gentleman there?

A. Yes, he was sitting on the desk facing the track.

Q. Where did you make the statement?

A. At the desk facing that way, the side of the door, of Mr. Ferguson the detective.

Q. Ferguson the detective?

A. Yes, sir, he took my statement and I said I had no revolver. I didn't say the deputy, I said I didn't have none.

Q. Did you say anything to the prosecutor or Mr. Ferguson about your wounds?

A. I told Mr. Ferguson I was hit and he laughed.

Q. Did you show him your wound then?

A. He wouldn't look at it.

Q. Did you want him to look at it?

A. What was the use if he laughed at me. He was there for what he could get.

REDIRECT EXAMINATION:

By MR. STRICKER:

Q. Did you see any of the deputies about that plant with a red sweater?

A. No, sir, I didn't. The only man I saw with a red sweater was Morocco.

Q. He was a striker?

A. He was a striker.

Q. Now you say you had a conversation with the prosecutor in the course of your presence in the Grand Jury room?

A. Yes, sir, I did.

Q. What were you doing in the Grand Jury room?

A. I was subpoenaed for a witness.

Q. In what case?

A. In Frescini or Bessini, Morocco, I think his name is, or Loroso.

Q. Do you know what for?

A. Yes, sir; for inciting riot, I understand was one of them.

THE COURT: I do not think this is competent evidence, but if the State does not object to it—

MR. WESCOTT: I was talking, I didn't hear.

THE COURT: Have the evidence read.

(Last two questions and answers repeated by the stenographer.)

THE COURT: With reference to inciting a riot I will order that last part to be stricken out.

MR. STRICKER: That came out by the at-

torney general's cross examination, and I propose to show what this man was doing there.

THE COURT: That is all right; I don't object to that part of it, only where he attempts to characterize what the nature of the proceedings were. That is not competent.

MR. STRICKER: He knows, of course, what he was a witness in, and what the nature of the charge was.

MR. COAN: He knows of course what he was called for and in the last part of the answer where he says it was for inciting a riot, that is all.

Q. You say when you got back to the plant McLoughlin and Johnny O'Mara helped you up?

A. Mr. O'Mara didn't help me up he went after hot water. Mr. McLoughlin helped me up.

Q. Was O'Mara there when you got back?

A. He was on the stoop with a hose in his hand.

Q. Where was McLoughlin?

A. He was at the foot of the stairs at the sleeping apartment.

By MR. WESCOTT:

Q. You went and got your breakfast I understand, before you went upstairs?

A. Before I went upstairs?

Q. Yes.

A. No, I said I got my breakfast after seven o'clock, and this happened after eight o'clock.

Q. This was after eight o'clock?

A. That is after the train came in, after eight o'clock.

Q. After the train came in?

A. Just before the train came in this thing happened. I saw some strikers before I went to the gate. I had my breakfast and I told you I went into the cook house and got a cup of coffee, and then got some breakfast.

THE COURT: His evidence will show what he said. What he said was taken down.

A. I stated I said it was seven o'clock the first time in the morning. And then I told you I made a mistake, that it was eight o'clock instead of seven.

WILLIAM McLOUGHLIN, a witness produced on behalf of the defendants, being duly sworn according to law, on oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Where do you live, Mr. McLoughlin?
A. Newark, New Jersey.
Q. And how old are you?
A. I am 46 years old.
Q. Married?
A. Yes, sir.
Q. Family?
A. Yes, sir.
Q. How long have you lived in Newark?
A. I moved to Newark in 1893.
Q. Have you resided there ever since?
A. Yes, sir.
Q. What is your business?
A. I am a verterinary surgeon
Q. And were you employed by the sheriff of this county as a deputy during the month of January of this year?
A. Yes, sir.
Q. When, on what day?
A. I was employed on the 5th of January.
Q. And were you sworn in by the sheriff of this county?
A. Yes, sir.
Q. And as a result of that did you commence your duties at that plant?
A. Yes, sir.
Q. What were your duties in and about that plant?
A. As a guard at night.
Q. At night?

A. Yes, sir.
Q. Where was your post?
A. In the rear of the building known as the dining room?
Q. Can you indicate that on the chart here?
A. I think so.
Q. Please do so?
A. The dining room would be—
Q. Take the other chart please.
A. The dining room would be right here.
Q. On the first story or second story?
A. Well, I walked at night from there—
Q. No. Was the dining room on the first story or second story?
A. The dining room was on the first floor.
Q. Where was your post there that day?
A. And I was to go from this building part way over to this building and back again.
Q. And is that what you were doing the night before the 19th?
A. Yes, sir.
Q. Please take your seat. How long did you remain on that beat? On that day.
A. Upon the 19th are you getting?
Q. Yes.
A. From a quarter to seven in the evening until a quarter to seven in the morning.
Q. Did you remain on post until a quarter of seven the following or whenever it was?
A. Yes, sir.
Q. What did you do?
A. I then had my breakfast and went to bed.
Q. What time did you go to bed?
A. I should say about half past seven.
Q. Did anything occur about that time?
A. Well, not at that time Later.
Q. How much later did anything happen?

A. Well, perhaps an hour or an hour and a quarter I was called to get up.

Q. Yes.

A. But I didn't get up at that time. I was sound asleep and I didn't get up.

Q. A little louder.

A. I didn't get up that time I was called.

Q. When did you get up?

A. A few minutes later I was called again.

Q. Did you see or hear anything?

A. I heard some shots being fired.

Q. Were you dressed or undressed?

A. I was undressed.

Q. Where were you at the time when you heard the shots fired?

A. I was standing by the window.

Q. Of what building?

A. In the sleeping room over the office.

Q. The Williams & Clark office?

A. Office, yes, sir.

Q. And what if anything did you see?

A. I looked out of the window and I saw a great many people near the depot surrounding it, and I saw some shots fired from that direction.

Q. Yes.

A. And I then went back and dressed, and while dressing I heard a great many shots, and after I dressed myself I started downstairs.

Q. Yes.

A. I had gotten to the bottom of the stairs and I met this man Mullen who was coming in, and he said he had been injured.

Q. Did you look at his injuries?

A. Yes, sir.

Q. What did they consist of?

A. He was bruised on the knee. Just above the knee, and he had a small cut there.

Q. Did you assist him then to come into the building?

A. I assisted him to come upstairs.

Q. Anybody up there when you got upstairs?

A. No, sir.

Q. Where was O'Mara at that time?

A. He was down getting some water for that wound .

Q. Where was O'Mara when Mullen came in?

A. He was on the platform.

Q. Did you shoot anybody that morning?

A. No, sir.

Q. Did you shoot at anybody?

A. No, sir.

Q. Were you with an aggregation of men that left the plant about that time and went towards the station?

A. No, sir.

Q. Did you leave the building that morning?

A. No, sir.

Q. While you were located there or while you were on duty at that plant, did you ever see any deputy wearing a red sweater?

A. No, sir.

CROSS EXAMINATION:

By MR. COAN:

Q. You were on duty from half past seven in the evening until half past seven in the morning?

A. A quarter of seven in the evening until a quarter of seven in the morning.

Q. From a quarter of seven in the evening until a quarter of seven in the morning?

A. Yes, sir.

Q. On this particular day you quit at a quarter to seven?

A. Yes, sir.

Q. And where did you report when you quit?

A. Went to the dining room immediately, for my breakfast.

Q. Weren't you compelled to report any place before you went to the dining room?

A. No, sir.

Q. You went direct to the dining room?

A. Yes, sir.

Q. You had your breakfast there?

A. Yes, sir.

Q. Who was present when you had your breakfast?

A. I don't remember. I think the waiter was there, I imagine a waiter, I imagine it was he I saw there. Perhaps three or four other men.

Q. How long did you stay in the dining room?

A. Well, perhaps ten minutes.

Q. Had your breakfast in ten minutes?

A. Yes, sir.

Q. Then where did you go?

A. Went to bed.

Q. So that you were in bed by seven o'clock?

A. In bed by seven or a few minutes later.

Q. And how long did you remain in bed?
A. Until I was called, I imagine about eight o'clock.
Q. That is simply a guess, is it?
A. Yes, sir.
Q. When did you come down to this plant?
A. Came there on the 5th.
Q. How did you come to come there?
A. I was employed to come there.
Q. By whom?
A. By Mr. O'Brien.
Q. In Newark?
A. Yes, sir.
Q. And what time did you get there?
A. I imagine about four o'clock or thereabouts?
Q. In the afternoon of the 5th of January?
A. Yes, sir.
Q. Anybody come with you?
A. Yes.
Q. How many?
A. Eight, seven others besides myself.
Q. Were you sworn in?
A. Yes, sir.
Q. Where were you sworn in?
A. In the office.
Q. Of the Williams & Clark plant?
A. Yes, sir.
Q. By whom?
A. By Sheriff Houghton.
Q. When were you sworn in?
A. On the following afternoon.
Q. So that you were there from the afternoon of the 5th until the afternoon of the 6th before you were sworn in?
A. Yes, sir.
Q. Did you have any weapons while you were there?

A. No, sir.
Q. At no time?
A. No time, I had a stick.
Q. What?
A. A stick, known as a policeman's stick.
Q. Where did you get that?
A. At the office there of Williams & Clark.
Q. Did you see those guns in the office there?
A. No, sir, I didn't.
Q. Never saw any guns there?
A. No, sir.
Q. Were you ever in the office?
A. I was in the area in front of the desk.
Q. Never in the inner room at all?
A. No, sir.
Q. You hadn't been furnished with a revolver there at all?
A. No, sir.
Q. Or did you see anybody else furnished with a revolver?
A. I didn't.
Q. You heard this shooting before you got dressed?
A. Yes, sir.
Q. Was that after that you dressed yourself and came down stairs and met Mullen?
A. Yes, sir.
Q. So that you heard no shooting while you were dressing? And looking at Mullen's injury?
A. Sir?
Q. So that you heard no shooting while you were dressing yourself?
A. I don't remember hearing any, no, sir.
Q. How long was it after you met Mullen that you looked at his injury upstairs?
A. I went upstairs with him immediately, and

I raised his trousers and drawers, and I then looked at the wound.

Q. Well, how long a time did it take from the time you met him downstairs until you looked at his wound upstairs?

A. Perhaps five or six minutes.

Q. State whether or not you heard any shooting then?

A. I don't remember it.

Q. Just a moment until I finish the question. State whether you heard any shooting then after the time you started upstairs with Mullen?

A. I don't remember of hearing any.

Q. You heard considerable shooting before that?

A. Yes, sir.

Q. A regular volley?

A. Well, a great deal of shooting.

Q. Where were you when you heard this volley?

A. I was dressing upstairs.

Q. And you saw where the shooting came from?

A. I couldn't.

Q. That was all the shooting you heard, wasn't it?

A. Yes, sir.

THE COURT: We will take a recess now until tomorrow morning at half past nine.

MR. STRICKER: Do we understand that the cross examination of this witness is closed?

THE COURT: Yes.

MR. WESCOTT: There may be some more questions.

THE COURT: (To the witness) Then you be here in the morning.

(Whereupon an adjournment was taken until Friday, May 28th, 1915 at 9.30 A. M.).

New Brunswick, N. J., May 28, 1915.
Met pursuant to adjournment.

WILLIAM McLAUGHLIN continued.

FURTHER CROSS EXAMINATION:

By MR. COAN:

Q. Now, Mr. McLaughlin, your beat was from—

THE COURT: Who was cross examining this witness?

MR. McCARTER: I think only one counsel ought to cross examine. It goes on exactly as though it was uninterrupted, I think.

THE COURT: Only one counsel must cross examine the witness.

MR. McCARTER: Were you cross examining, Mr. Coan?

MR. COAN: Yes, sir.

MR. McCARTER: I beg your pardon.

Q. Your beat, Mr. McLaughlin, was from what you call the dining room?

A. Yes, sir.

Q. Half way over to this large building as shown on the map?

A. Yes, sir.

Q. From that point could you see the Williams & Clark station?

A. Well, not distinctly.

Q. Well, why couldn't you see it distinctly?

A. There was a large fence in front of the door.

Q. Picket fence, wasn't it?

A. Yes.

Q. And it was, of course, possible to see between those pickets?

MR. McCARTER: He was not at that place at the time. He was in the dining room.

THE COURT: I do not hear you, Mr. McCarter.

MR. McCARTER: I was addressing counsel. I said I did not see what materiality there is in this. He does not pretend to have been at this spot at the time the occurrence took place. What he could see ordinarily does not seem to me to be of moment.

THE COURT: How does the State think that is material? He has told just where he was, and he testifies to what he said he saw, or did not see.

MR. COAN: It seems to me it goes to the question of this witness's credibility. I think we have a right to test him as to what he could see from where he said he was, and what things were within the range of is observation at that time.

THE COURT: From where he said he was is all right.

MR. COAN: That is what I am asking about.

THE COURT: I thought you were speaking about some previous time?

MR. COAN: No. At the time where he said he was that morning.

MR. STRICKER: You are talking about his beat.

MR. COAN: He testified where he was that morning, on his beat, on direct examination.

THE COURT: Proceed.

Q. What time did you say you left your beat?
A. At quarter of seven.
Q. Did you see anybody over in the station before you left your beat?
A. I didn't notice anybody there.
Q. You went to bed, I think you said, about seven o'clock?
A. I think about quarter after seven o'clock.
Q. About quarter after seven?
A. I think so.
Q. Now, before you had gone to bed, had you heard anything of the happenings over at Liebig's that morning?
A. I had not.
Q. And where did you go to bed?
A. Upstairs over the office.
Q. Over the office?
A. Yes, sir.
Q. As you came from the dining room to go to bed in the office, you had to come around the front here and pass up over that platform, did you not?
A. No. We went in the rear of the building.

MR. STRICKER: One moment. Is Chief Harrington to be a witness in this case?

MR. COAN: We don't know. Depends on your defence.

MR. STRICKER: Then we ask that he be excluded from the court.

THE COURT: Proceed.

MR. STRICKER: There is a person in this

room who is likely to be called as a witness.

THE COURT: Why didn't you address the court, I do not know what you are talking about when you sit down under the bench and talk to counsel. Have you a motion to make?

MR. STRICKER: I make a motion that he be excluded.

THE COURT: Who is it?

MR. STRICKER: Chief Harrington of the Borough of Roosevelt.

THE COURT: You say he is to be called as a witness?

MR. STRICKER: I have just asked the Prosecutor whether he expects to call him as a witness, and he says it all depends on what my defence is going to be.

THE COURT: I suppose it would be wiser to have him retired.

Q. Where were the stairs leading up to the other floor?

A. On the east side of the building.

Q. In the front or in the rear?

A. In the rear.

Q. There is a corridor runs right from the front room to the rear there, isn't there, of that stairway?

A. There is.

Q. And as you went to bed there, you observed some of your fellow deputies around in that corridor?

A. No, I did not.

Q. I want to know whom you met from the time you left the dining room until you got upstairs that morning?

A. I can't remember of meeting anyone. I may have, but I don't remember.

Q. Why, the events of this morning are very fresh in your mind, aren't they?

A. Yes, sir.

Q. Who have you talked with about the occurrences that morning?

A. Well, I have not talked with anybody that I know about that occurrence.

Q. I said occurrences, Mr. McLaughlin.

A. I have talked with the men who were incarcerated with me, and with the counsel.

Q. All of those defendants here, you have talked with them?

Q. Been confined with them in the same room over at the County Jail?

A. Yes.

Q. You said you came to Newark in 1893?

A. Yes, sir.

Q. Been in Newark ever since?

A. Yes, sir.

Q. What have you been doing there?

A. I have practiced veterinary medicine there.

Q. How long?

A. Nearly all of the time.

Q. When did you cease practicing veterinary medicine?

A. Sir?

Q. When did you cease practicing veterinary medicine?

A. I haven't ceased until last year, about a year and a half ago.

Q. Then you did cease about a year and a half ago?

A. Well, not altogether, no, sir.

Q. Well, were you practicing veterinary medicine in January, 1915?

A. I was not.

Q. Have you ever been engaged in guard duty before?

A. At one other time, yes, sir.

Q. Where was that?

A. Paterson, New Jersey.

Q. When?

A. I think three years ago.

Q. That was during the time you were supposed to be practicing veterinary medicine in Newark?

A. I didn't practice it all the time.

Q. Well, when did you practice it?

A. I have practiced always since I have been there with the exception of sometimes perhaps I may have been away and wasn't doing work at that. About three years ago I became veterinarian for the Oklahoma Ranch and Wild West show, caring for the horses.

Q. You were with the Oklahoma Ranch and Wild West Show?

A. Yes, sir.

Q. For how long?

A. Three months, five months.

Q. When was this?

A. About two years.

Q. Why didn't you tell me that when I asked you if you had been in Newark ever since?

MR. McCARTER: He didn't ask if he had been in Newark, ever since.

THE COURT: I didn't understand this man said he was out of Newark.

MR. COAN: But he said he was with the Oklahoma Wild West Show.

THE COURT: He said he was a practicing veterinary surgeon.

Q. Where were you with the Wild West show?
A. I went all the way to California and back.
Q. During what period of time did that take place?
A. I went with them the 9th of May and got home I think the first of October.
Q. Since 1893, what other ramblings did you do over the country?
A. I don't know that I did any rambling.

MR. STRICKER: I object to that if your Honor please.

THE COURT: Well, he said he didn't do any.

Q. Were you a deputy or guard up at Paterson for O'Brien?
A. I was.
Q. That was last year?
A. I believe two years ago.
Q. During the silk strike up there?
A. Yes, sir.
Q. Do you know whether or not you are on O'Brien's reserve list?

MR. McCARTER: I object. What is the materiality of that?

THE COURT: I will overrule the question.

Q. How did you come to get to this place down at Roosevelt?
A. I asked Mr. O'Brien for work.
Q. When did you ask him for work?
A. Well, I think about the 4th of January.
Q. About the 4th of January?
A. I imagine so.
Q. Did you know that Mr. O'Brien was in need of men about the 4th of January?
A. I understood so.
Q. How did you understand that?

A. Somebody told me. I don't just remember who did that.

Q. Where were you when you were told?

A. I was on the street.

Q. What street?

A. I can't just remember what street.

MR. STRICKER: If your Honor please, I respectfully submit this is not cross examination on anything material. It is conceded this man was brought down to Roosevelt; it is conceded he was in the employ of the O'Brien Agency, and I respectfully submit that the manner in which he got there or the manner of his employment is entirely immaterial.

THE COURT: I don't say that it is cross examination; my view of the case don't make much difference how he got there. He might have gone there at the request of Mr. O'Brien, or at the request of the sheriff, or under the employment of these men that own the factory. It don't make any great difference; that don't permit them to commit an unlawful act.

MR. COAN: It seems to me that is quite material in the testing of the witness's knowledge.

THE COURT: What part?

MR. COAN: To show the general character of his relationship with these men and what his past has been, how he came to go there, so the jury has an adequate idea of what the man is, and credit they may accord his testimony.

THE COURT: I will overrule the question.

Q. You had heard no revolver shots that morning before you went to bed?

A. I had not.

Q. And you went to bed you say about a quarter after seven?

A. About, yes.

Q. Had you heard any revolver shots before you went to sleep?

A. I had.

Q. What?

A. I had.

Q. How long after you had gotten in bed?

A. Well, I can't just remember how long it was. I was called and I got up, and as I got up I looked out the window.

Q. Then do I understand you to say you hadn't been asleep?

A. I had been asleep, yes, sir.

Q. My question was directed to the time between the time of your going to bed and the time of your getting to sleep. Did you hear any revolver shot, or shots of any kind during that period?

A. No, earlier in the night I did.

Q. I am asking you about that morning?

A. I didn't.

Q. Had you heard any revolver shots that morning before the time you were called?

A. I had not.

Q. Is there anything that fixes in your mind the time that you were called?

A. Well, I know I was called and that I got up, and I heard some very loud talking and noise, and I then looked out the window.

Q. Did you get up when you were called?

A. No, I didn't.

Q. When was that you heard this loud talking?

A. After I had gotten up.

Q. After you had gotten up?

A. Yes.
Q. Then you had to be called twice?
A. I had.
Q. When were you called first?
A. I can't say.

MR. STRICKER: I object to this if your Honor pleases. I submit we have been all over this yesterday.

THE COURT: I will allow the question. I think we did go over it yesterday.

MR. STRICKER: Beg pardon?

THE COURT: I think we did go over that yesterday. I will allow the question.

Q. (Repeated).
A. I can't say.
Q How long after was it before you were called the second time?

MR. STRICKER: I object if your Honor please.

THE COURT: I will allow the question. You may take an exception.

Exception allowed. Let it be sealed.

JAMES J. BERGEN,
Judge.

MR. STRICKER: I want to save time. I don't want to make any captious objections, or objections that are overruled. Are we to go over this whole thing today?

THE COURT: If the State finds they have omitted something.

MR. STRICKER: This is not an omission. This is over the same ground.

THE COURT: I will permit this question. I don't know about that. I won't make any promises.

Q. (Repeated).

A. I can't say.

Q How long after that was it before you got up and came down stairs?

A. When I was called I got up right away the second time.

Q. Immediately?

A. Very nearly so.

Q. And how long a time was it from that until you got down stairs?

A. I imagine about 12 minutes, may be a little more.

Q. Now, can you fix the time you got down-stairs?

A. I cannot.

MR. STRICKER: I object. That is not cross examination.

THE COURT: He said he cannot.

A. (Repeated).

Q. You have been in jail for how long?

A. Going on five months.

Q. Been paid for every day since that time?

MR. McCARTER: We object as immaterial.

THE COURT: I will allow it.

A. No.

Q. You haven't been?

A. No.

Q. What days haven't you been paid for?

MR. McCARTER: Objected to as immaterial.

THE COURT: I will allow the question. You may take an exception.

MR. McCARTER: Exception.

Exception allowed. Let it be sealed.

JAMES J. BERGEN,
Judge.

A. I haven't been paid for a week or more.

Q. But up to a week ago or more you were paid?

THE COURT: Mr. Prosecutor, what is the purpose of this cross examination? If he has been paid by somebody since he has been in jail, what effect does that have upon what happened on the 19th of January.

MR. WESCOTT: It may not have any effect upon that. It is a very unusual circumstance, that a gentleman should be employed at so many dollars a day, and his services should terminate on the 19th day of January, and from that time on he should not have rendered any service, and yet be paid. It is an unusual circumstance and it has weight in this case. Our proposition is to utilize it. Your Honor, it seems to me, can very well see that that might be very far-reaching in its ultimate effect.

MR. McCARTER: When men's lives are at stake, they would swear falsely, when their lives are at stake, for three dollars a day, is that it, Mr. Attorney General?

MR WESCOTT: I will answer you when the time comes. That is the reason for asking this question.

THE COURT: I do not quite understand that this question has that purpose in view. If you are asking this witness who paid him—

MR. WESCOTT: No. Not who paid him. If he had been paid?

Q. (Question repeated by stenographer)?
A. Yes, sir.

MR. COAN: That is all.

ROBERT WALLACE, the defendant, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Wallace, where do you live?
A. Newark.
Q. And how old are you?
A. 33.

THE COURT: I want to say to this witness that this is your testimony. If you will not speak out so the jury can hear you, you will not get the benefit of it. I cannot be prodding you all the time to speak so the jury can hear you. It is your own fault if you will not testify so the jury can hear you. They are within a reasonable distance.

Q. Are you married?
A. No, sir.
Q. How old are you?
A. 33.
Q. How long have you lived in Newark?
A. Off and on for the past four years.
Q. What is your trade or occupation?
A. I haven't any trade.
Q. Where were you in January of this year?
A. January of this year I was at Roosevelt, New Jersey.
Q. And how did you come to get to Roosevelt, New Jersey?
Q. And who hired you?
A. I was hired by J. F. O'Brien Agency of Newark.

Q. How long have you known the head of that agency, J. F. O'Brien?

A. Why, fully four years.

Q. Have you done guard duty before of this kind?

A. I had.

Q. Where?

A. I had worked in Paterson; I had worked in Wharton, and worked at several jobs.

Q. Give us the names of the places where you did guard duty?

A. I worked in New York, and I worked in Michigan.

Q. What day were you employed by Mr. O'Brien?

A. 5th day of January.

Q. When did you reach the Borough of Roosevelt?

A. 5th day of January.

Q. And were you sworn in as a deputy sheriff of this county?

A. Yes, sir.

Q. By whom?

A. Sheriff Houghton.

Q. And as a result of being sworn in did you commence doing duty there as a Deputy Sheriff?

A. I did.

Q. On the same day?

A On the same day.

Q. Which of the two plants, directing you now to the Williams & Clark and Liebig, were you doing duty?

A. At the Williams & Clark plant.

Q. Directing your attention to the morning of the 19th, between seven and eight o'clock, had any information reached you regarding anything which had occurred at the Liebig plant?

A. Why, there was a rumor. I heard a rumor.
Q. Well, what was the rumor?
A. That there was trouble at the Liebig plant.
Q. Where were you between seven and eight o'clock on that morning?
A. I was in different parts of the plant.
Q. Outside or inside?
A. Inside.
Q. And can you step down and show us on that tracing where you were inside of the Williams & Clark plant on that morning between seven and eight o'clock?
A. Well, that is hardly complete. It is a way down on the water front, here, and back in here (indicating).
Q. Where would the water front be?
A. I should judge about 700 feet.
Q. It does not appear on the map?
A. No.
Q Were you near the front of the plant around eight o'clock?
A. I was in the Commissary Department.

THE COURT: Won't you answer the question?

Q. (Repeated by stenographer)?
A. Yes.
Q. What did you say about the Commissary Department?
A. I was in the Commissary Department.
Q. At what time?
A. At 7.45.
Q. Step down and show us where the Commissary was, if it appears on that tracing.
A. (Witness indicates on map.)
Q. You were there at 7.45?
A. 7:45 at that end of the building.

Q How do you fix the time at 7:45?
A. Because I had noticed my watch.
Q. How long were you in there after 7:45?
A. Possibly ten minutes.
Q And then where did you go?
A. Went to the front of the plant, the office, the gate.
Q. Show us where that is on that map?
A. Right here (indicating on map).
Q Now take a seat. Did you look out upon the station and the grounds surrounding it, the vicinity of it?
A. I did.
Q. What did you see, if anything?
A. I saw a crowd of people there.
Q. What kind of people?
A. Evidently strikers.
Q. And what was their conduct, or what were they doing?
A. They were in an excited mood.
Q. Say what they were doing, please?
A. They were brandishing clubs, yelling, throwing their arms around.
Q. Did you notice anything on the track?
A. Not at that particular moment.
Q. Did you notice a pole on the track with something red on it?
A. Later.
Q. No, when you first looked?
A. No, sir, not at that time.
Q. Go on and tell just exactly what occurred after that?
A. Well, I observed this crowd coming down the track from the direction of Cartaret. Coming down the main line of the Sound Shore Railroad.
Q. How many of them were there approximately?

A. Why, around four hundred. They were coming down, they were gesticulating and brandishing their sticks and yelling. I paid particular attention to them because I got this rumor earlier in the morning that there had been trouble at the Liebig plant. As I watched them, they arrived at this station, and they stopped. Some of them turned to run back, and as they did a party with a rain coat and a stick in his hand turned and ran back and chased these men back to the crowd, beating them over the shoulders with this stick.

Q. Was that man a guard?

A. No. He was one of the mob.

Q. Do you know who he was?

A. I found out afterwards.

Q. Well, who was he?

MR. COAN: I object.

A. His name was Frescini.

Q. That is, you mean you found out his name afterward?

A. Found out his name afterward.

Q. Go ahead.

A. He got the crowd back together. Some of them stepped back into the lots, and as they did, it was about this time that the train was due, and the train was a trifle late this morning, and we waited, as customary, for this train to come before going out to escort these men in from the train that were due to arrive on this train. And as this train was slowing up for this obstruction which had been placed on the track in the meantime, we left, or a body of our men left, probably eight or ten of us, left the plant to go out to get these men, to escort them into the plant. And as they did, this mob surged over the tracks towards these men. These men got as far as the end of this fence from the office, when we, or others of us, em-

erged from the plant to their assistance. It was necessary, which we judge it was. And from then we all spread out and went from there out to this train. And as we got out there they started to throw stones and sticks and then missiles, they could lay their hands on. About that particular time that we issued from this fence or beyond this fence.

Q. When you speak of a fence, will you kindly step down and show the jury what you mean by that?

A. At the time we reached here, going out here, there was four or five shots fired from there (indicating).

Q. By whom?

A. By this crowd that was over on this track. When we got out here we spread out, part of the men going down there and others going on directly across from here.

Q. Where did you go?

A. I went right directly out, followed that track right out to there (indicating).

Q. Now take your seat please. Did you have any firearm?

A. I did.

Q. What did you have?

A. I had revolver.

Q. Did you discharge that revolver?

A. I did.

Q. Did you discharge it at anybody?

A. I did not.

Q. When was it that you discharged the revolver?

A. When I was practically surrounded by these strikers.

Q. How many strikers?

A. I could not say.

Q. What were they doing at the time?

A. They were throwing stones, bricks, sticks and stones at me and others.

Q. How many times did you fire?

A. I fired three shots into the air.

Q. Were you struck with anything?

A. I was.

Q. With what?

A. Well, it was a missile. I could not say what it was.

Q. And where were you struck?

A. Struck in the ankle.

Q. Is there any mark left of that now?

A. There is a small scar there, yes, sir.

Q. Kindly show it to the jury.

A. (Witness indicates to the jury.)

Q. Why did you fire those three shots in the air, Mr. Wallace?

A. Because I was in danger of my life.

MR. STRICKER: That is all.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Did you serve in Trenton as a strike-breaker?

A. No, sir.

Q. Or as a guard?

A. No, sir.

Q. Never. You remember hearing of a strike there, don't you, in the Mercer Motor Car Company?

MR. McCARTER: I object as immaterial and irrelevant.

THE COURT: I will allow the question. Take an exception.

Exception allowed. Let it be sealed.

JAMES J. BERGEN,
Judge.

A. Yes, sir.

Q. Where were you when that strike occurred?

A. I believe I was in New York at that time.

Q. How did you happen to hear of it?

MR. McCARTER: I object as immaterial.

THE COURT: I will allow it.

A. Because rumors got around that there was a strike down there and they were hiring men for it.

Q. A rumor there was a strike in Trenton got around where you were in New York?

A. Yes, sir.

Q. What were you doing at that time?

A. I was looking for work.
Q. What kind of work?
A. Anything I could do.
Q. Where were you in New York looking for work at that time?
A. Why, I can't say any particular point.
Q. Well, give us the particular place?
A. Well, no particular place.
Q. Give us the city or town?
A. In New York City.
Q. In New York City looking for work?
A. In New York City, yes, sir.
Q. Where did you look for work in New York City?
A. I looked around different agencies.
Q. What agencies?
A. Detective agencies.
Q. What detective agencies?
A. I looked around most all of them that I knew.
Q. Name them?
A. Why, Asher's.
Q. What time of the day were you at Asher's?

MR. McCARTER: Does your Honor think that is material, what time of day this gentleman was at Asher's, a detective agency in New York?

THE COURT: Well, you have proved where he lived and what he did, and they have a right to cross examine him about it, to see whether he is telling the truth. It may affect his credibility.

MR. McCARTER: That is all right. But where he was at Asher's, at the time there was a strike, or he heard of the Trenton strike?

THE COURT: I will allow the question and you make take an exception.

Exception allowed. Let it be sealed.

JAMES J. BERGEN,
Judge.

Q. Can you tell what time of day you were there?

A. I couldn't.

Q. When you got to Asher's, is that the first place you went to work?

A. No, sir, it was not.

Q. What was the first place?

A. That I can't say.

Q. What was the second or third place?

A. I couldn't say.

Q. The fourth place?

A. I have no idea.

Q. How many places did you visit that time?

A. Possibly three or four.

Q. Where were they?

A. They were scattered around the city.

Q. Name them?

A. By the National Rectors Associations.

Q. Yes, when were you there?

A. That I don't know, the exact time.

Q. Did you apply for work at Trenton?

A. No, sir, I didn't.

Q. Were you at the Sanford Carpet Mills strike?

A. I was.

Q. When was that?

A. Last fall.

Q. How many different strikes have you been connected with as guard?

A. Well, not more than two or three as guard.

Q. Were you connected with more than two or three in some other capacity than as guard?

A. I was.
A. In Michigan and New York City.
Q. What?
A. In Michigan and New York City.
A. Michigan, New York State, Paterson.
Q. In what capacity were you acting in those places?
A. I had charge of the men.
Q. Where did you say you lived?
A. Newark.
Q. How long have you lived in Newark?
A. Well, between three and four years off and on.
Q. Where?
A. 522 South 17th street.
Q. Where?
A. 522 South 17th street.
Q. Did you live in New York?
A. I did.
Q. Where?
A. I lived at several different places in New York.
Q. Lived at 221 West 49th street?
A. I did.
Q. With telephone number 1664 Columbus?
A. Yes, sir.
Q. When did you live there?
A. Why I think I lived up there last year.
Q. Where were you born?
A. Syracuse, New York.
Q. How long did you live there?
A. That I can't say. I was pretty young at that time.
Q. Where did you go from Syracuse?
A. Herkimer, New York.
Q. Where?
A. Herkimer, New York.

Q. How long did you stay there?
A. Oh, I can't say exactly.
Q. What did you do in Herkimer?
A. I lived with my grandparents.
Q. For how long?
A. Possibly fifteen or twenty years.
Q. Where did you go from Herkimer?
A. I moved to Gloversville.
Q. Where is that?
A. New York State.
Q. How long did you stay there?
A. Well, I don't believe I stayed there much more than six months.
Q. What were you doing while you were there?
A. Nothing.
Q. What were you doing while you were in Herkimer?
A. Nothing. Going to school.
Q. Where did you go from Gloversville?
A. I went to South America.
Q. How long did you stay there?
A. Possibly two years.
Q. What did you do there?
A. Worked for the government.
Q. Then where did you go from South America?
A. I came back to the states.
Q. Where?
A. New York State.
Q. How long did you stay there?
A. I was in New York at that time possibly two years.
Q. What did you do?
A. Nothing in particular; anything I could do.
Q. And when you went from New York, where did you go?
A. We went back up the state.

Q. Where?
A. Up New York State.
Q. Whereabouts?
A. Schenectady, New York.
Q. How long did you stay there?
A. I was there about a year.
Q. What did you do there?
A. Worked for the General Electric Works.
Q. When was that?
A. I think it was around 1904.
Q. Where did you go from there?
A. Came back to New York City.
Q. How long did you stay there?
A. I don't know.
Q. What did you do while you were there?
A. Why I done detective work.
Q. For whom?
A. Well, I can't say who.
Q. Can't say for whom you did the detective work?
A. I done it for more than one.
Q. Well, for whom?
A. I done detective work for Asher, I done work for Nealor Thiele, and I done work for Brown of Philadelphia, they have a branch office there.
Q. Then were did you go?
A. I stayed in New York.
Q. Been there ever since?
A. No.
Q. When you didn't stay in New York, where did you go?
A. I was in Newark.
Q. How long have you been in Newark?
A. Off and on about the last three or four years.
Q. What were you doing while there?

A. Worked for J. F. O'Brien Agency.
Q. All the time?
A. Practically, yes.
Q. Did you work for Kerkoff?
A. I did.
Q. When?
A. Last fall, believe.
Q. Where?
A. Amsterdam, New York.
Q. Doing what?
A. As a guard there.
Q. You said you had no trade?
A. No, sir.
Q. You were sworn in down here by the sheriff as a deputy sheriff?
A. Yes, sir.
Q. You considered yourself a deputy sheriff?
A. I did.
Q. And were any specific duties assigned to you as deputy sheriff?
A. To protect life and property.
Q. Protect life and property?
A. Yes, sir.
Q. Where?
A. In that vicinity.
Q. In that vicinity?
A. Yes, sir.
Q. What was your oath?
A. I don't quite recall. It was the customary oath, I presume.
Q. To protect life and property was it?
A. To uphold the laws of the State.
Q. What?
A. To uphold the laws of the state and the constitution.
THE COURT: Now, do you know what the oath was?

A. I do not.

Q. Was it a part of your oath to protect life and property?

A. No, sir.

Q. Anybody give you any instructions?

A. In what way?

Q. Anything, in any way at all, when you were sworn in or afterwards?

A. Yes, sir.

Q. Who?

A. Sheriff Houghton.

Q. What did he tell you?

A. To use judgment.

Q. To use judgment?

A. Yes, sir.

Q. Tell you anything else?

A. Told us to be very careful to see that the plant as protected properly.

Q. What place?

A. The plant.

Q. Tell you to watch the plant?

A. No, sir.

Q. Told you to stay there, didn't he?

A. He did.

Q. So that when you went out of the place you disobeyed his instructions?

A. Yes.

Q. Well, why did you go out of the plant in disobedience of his instructions?

A. Because there was rioting there.

Q. Were you very much interested in the strike?

A. No, sir.

Q. You got a little mad about it?

A. No, sir.

Q. Now, I understand you heard there was trouble down at Liebig?

A. Yes, sir.

Q. What time in the morning did you hear there was trouble in Liebig?

A. I can't say definitely, but it was between seven and—

Q. About what time?

A. (Continued) And seven thirty.

Q. What were you doing at that time?

A. I was out in the plant.

Q. Where?

A. In the grounds.

Q. Where?

A. In the grounds.

Q. Whereabouts in the grounds?

A. Why in the rear of the buildings towards the water.

Q. Yes. Now who informed you?

A. It was a rumor. I don't know particularly who did.

Q. You were down along the river seeing nobody got into the plant from the river?

A. No.

Q. What were you doing on the river down there?

A. I went to the toilet.

Q. Wasn't there a toilet anywhere except along the river?

A. There was.

Q. How far did you have to go to that toilet along the river?

A. I went to the engine room.

Q. Went where?

A. I went to the engine room.

Q. How far did you have to travel to go to that engine room?

A. I couldn't say exactly.

Q. A considerable distance?

A. Yes, sir.

Q. And it was while you were in the toilet you heard this rumor?

A. It was when I came out.

Q. It was when you came out of the toilet?

A. Yes, sir.

Q. Where were you then when you heard the rumor?

A. I was in the dining room.

Q. You came from the toilet to the dining room, and there you heard the rumor?

A. Yes, sir.

Q. Who told you?

A. Somebody hollered outside there was trouble down at Liebig's plant.

Q. Had you your revolver when you were in the closet? Toilet?

A. Yes, sir.

Q. So that you didn't get a revolver when you heard there was trouble. You had one already?

A. I did.

Q. How many rounds of ammunition did you have?

A. Just what was in the gun.

Q. Where did you keep the ammunition?

A. In the gun.

Q. No, what was it in the gun?

A. Didn't have any.

Q. Wasn't there any ammunition at the plant?

A. There might have been.

Q. Didn't you know there was?

A. I don't.

Q. Where did you get the gun? Who furnished it?

A. I don't know who furnished it.

Q. Who gave it to you?
A. Mr. Patterson gave it to me.
Q. When?
A. The night of the 5th, when we were sworn in.

Is Mr. Patterson the man who came here the other day and refused to answer questions?
A. Yes, sir.

MR. STRICKER: We object to the question in that form.

THE COURT: That is one manner of identification.

MR. STRICKER: He can identify Mr. Patterson without putting it that way.

THE COURT: That is the usual thing.

Q. Who was he?
A. He was the man who gave me my gun.
Q. He was the man that came into court the other day and refused to answer questions; is that the man, or are you afraid you will incriminate yourself if you answer. Why don't you answer?

MR. McCARTER: Answer the question.

A. Yes, that was the man.
Q. What time were you at the water closet that morning?
A. Well, I didn't have my eyes on my watch or anything like that, but I should judge between seven and seven thirty.
Q. When did you first go to the dining room afterwards?
A. When did I first go to the dining room afterwards?
Q. Yes.

A. It was about a quarter to eight.
Q. It was there that you heard this rumor?
A. Yes, sir.
Q. Where is the commissary department?
A. The commissary department is right adjoining.
Q. And you were there about seven forty-five?
A. Yes, sir.
Q. And did you go from the watercloset to the commissary department?
A. Not directly, no, sir.
Q. Where did you go from the watercloset?
A. I was talking outside to one of the employees.
Q. Who were the employees?
A. That I couldn't say.
Q. How long did you talk to them?
A. Possibly five minutes, or a little longer.
Q. What were you talking about?
A. Why everything in general.
Q. Everything in general?
A. Conditions.
Q. What conditions?
A. Conditions of the plant and the strike.
Q. And then you went from there where?
A. To the dining room.
Q. And from the dining room where?
A. To the front gate.
Q. Then you went from there to the gate?
A. Yes, sir.
Q. Why did you go to the gate?
A. Because we heard men were coming down the track from the direction of Carteret.
Q. Who heard it, you say we?
A. That is the rumor in the dining room, of the dining room force.
Q. When you say we, who do you mean?

A. The dining room force. The waiters.
Q. Who were they?
A. I don't know their names.
Q. Were they deputies?
A. That I couldn't say.
Q. You don't know their names and don't know whether they were deputies?
A. I couldn't say whether they were sworn in or not.
Q. Well, were they deputies?
A. I couldn't say.
Q. Were they people interested in the strike employed there to protect the plant?
A. No.
Q. Who were they?
A. That I don't know.
Q. Were they employees of the plant?
A. That I couldn't say.
Q. Strangers to you?
A. Strangers to me, yes, sir.
Q. Never had seen them before?
A. No, sir.
Q. How many people were in the dining room you had never seen before?

MR. McCARTER: You mean the commissary, do you mean the waiters?

MR. WESCOTT: He understands the question. You don't have to ask me a question nor to enlighten him.

A. There was only one man there at the time.
Q. Where?
A. In the dining room.
Q. Who was it?
A. He was a waiter.
Q. You said we a while ago?

A. I was referring to myself and the waiter.
Q. What?
A. I was referring to myself and the waiter.

THE COURT: So that when you said the dining room force you referred to this one man.

A. Exactly.
Q. Who was he?
A. I don't know him by name.
Q. Have you ever seen him before?
A. Never.
Q. Is he sitting here with these defendants, that man?
A. I believe he is.
Q. Point him out.
A. (The witness does so.) That gentleman there.

By THE COURT:

Q. Do you know his name now?
A. Yes, sir.
Q. Call it to him?
A. Moran.

By MR. WESCOTT:

Q. When did you get acquainted with Moran?
A. After I had arrived at the plant.
Q. When was that?
A. Well, during the time I was at the plant.
Q. When did you get there first?
A. The 5th day of January.
Q. And then you got acquainted with Moran?
A. No, not to know his name.
Q. You knew him when you seen him?
A. Yes, sir, I knew him when I seen him.
Q. But the first time you saw him he was a stranger to you on the 19th day of January in the dining room?

A. No, sir.
Q. Is he the man that was there?
A. He is the man I was talking to at that time.
Q. But you didn't know him then?
A. I did not.
Q. He had been there from the 5th of January?
A. Yes, sir.
Q. Was he sworn in with you?
A. I don't know.
Q. You had seen him before, hadn't you, many times?
A. I seen him before.
Q. Know what he was doing around there?
A. Yes, sir.
Q. But you didn't know on the 19th day of January when you met him over in the dining room?
A. I knew him, yes.
Q. Well, you and he heard rumors?
A. Yes, sir.
Q. And then you went out to the gate?
A. Yes, sir.
Q. What did you do when you got to the gate?
A. I watched the crowd coming down the track.
Q. What hour was that that you went to the gate? Did this waiter go with you to the gate?
A. No, sir.
Q. You went alone?
A. I believe so.
Q. What hour was that?
A. Well, it was between 8:45 and 8:00 o'clock.
Q. 8:45 and 8:00 o'clock?
A. Yes, sir.

By THE COURT:

Q. You mean 7:45?

A. Between 7:45 and 8:00 o'clock.

By MR. WESCOTT:

Q. 7:45?

A. Yes, sir.

Q. And at that time you saw a crowd coming from Cartaret?

A. I did.

Q. How far up the track were they?

A. They were just approaching from behind the buildings.

Q. That was how far from the depot?

A. Well, I should judge that was about—well, I am no judge of distance, and of course I can't say.

Q. Can't you give us an idea?

A. Well, the way I figured it was possibly a quarter of a mile, or one-eighth of a mile rather.

Q. Between 7:45 and 8:00 o'clock you saw a crowd one-eighth of a mile coming from the direction of Cartaret to Williams & Clark depot?

A. Yes, sir.

Q. Was there anybody at the depot when you first saw that crowd?

A. There was.

Q. How many?

A. I couldn't say.

Q. Well, about how many?

A. Very few.

Q. Have you any idea who they were?

A. I have not.

Q. What were they doing, anything wrong?

A. Not that I noticed.

Q. Yelling and brandishing sticks, were they?

A. I couldn't say.

Q. You saw them?

A. I did.

Q. Can't you tell us whether they were brandishing clubs and yelling?

A. I didn't pay any particular attention to them.

Q. But you saw this crowd coming and they were brandishing clubs?

A. Yes, sir.

Q. How many clubs did you see?

A. Could not state.

Q. About?

A. I have no idea.

Q. Hundreds?

A. There was fully one hundred there.

Q. More than one hundred clubs?

A. I should judge so.

Q. Describe those clubs? What were they like? What did they look like to you?

A. Well, they were sort of a non-descript bunch of clubs. I couldn't say positively what they were.

Q. Well, if you know enough to characterize them as non-descript, you tell us what they looked like? Go ahead and tell us what they looked like?

A. Well, they looked like stumps or branches of trees that were broken off. They looked like pick-ax handles.

Q. How big were they?

A. I should judge probably two or three feet long.

Q. How many pickaxe handles did you see?

A. I could not say.

Q. About how many?

A. I have no idea.

Q. You saw other things, didn't you?

A. Yes, sir.

Q. They had bunches of iron in their hands?

A. I could not say from that distance.

Q. Well, they had sticks and bricks and one thing and another?

A. I could not say at that time.

Q. You will be able to say further on?

A. Yes, sir, in closer contact.

Q. How far were you from that crowd?

A. From that crowd?

Q. What was this crowd saying?

A. I could not hear anything at that time.

Q. How do you know they were yelling?

A. I could hear them yelling.

Q. What were they saying?

A. I don't know.

Q. Were they yelling in English or Italian?

A. I couldn't say.

Q. Were they English or Italian?

A. They were a mixture.

Q. Mixture of foreigners?

A. Yes, sir.

Q. When you looked into that crowd one eighth of a mile to the depot, were there any obstructions on the track?

A., No, I don't believe so.

Q. Don't you know?

A. I do not.

Q. And red rag on the track?

A. No, sir, not to my knowledge.

Q. You did not see it?

A. I did not.

Q. While this crowd was traversing that one-eighth of a mile what did you do?

A. I was watching them.

Q. You stood where, by the gate?

A. By the gate on the platform of the office.

Q. Alone?

A. No, sir.

Q. Who was with you?
A. I could not say.
Q. Why?
A. I don't know. I didn't recognize them. They were all men who belonged around the plant.
Q. What men, employes?
A. Some of the employes and some were deputies.
Q. And you didn't recognize any of them?
A. I was paying attention to this crowd coming down the railroad track.
Q. But you didn't recognize any of those people standing at the gate with you?
A. I recognized them as my own deputies, that is all.
Q. And who were they?
A. That I could not say.
Q. Why not?
A. I didn't know their names.
Q. Were you in charge of those deputies at that time?
A. No, sir.
Q. How many of you were there?
A. I don't know. Probably five or six.
Q. No more than that?
A. I couldn't say.
Q. Well, probably, there were five or six people there by the gate with you when you saw that a crowd one quarter of a mile, or one-eighth of a mile from the depot?
A. Yes.
Q. As the crowd marched along brandishing clubs and yelling, what did you do?
A. I was watching them.
Q. And you watched them until they got to what point?
A. Almost opposite to the plant.

Q. Almost up to the plant?

A. Almost opposite.

Q. How near the depot were they while you were standing there watching them?

A. Why, they were down where that "Y," that curve in the track branches off.

Q. They got that close to the depot, and you stood watching them?

A. Yes, sir.

Q. And during that time they were brandishing clubs and yelling?

A. They were.

Q. And that is all?

A. And throwing stones in the direction of the plant.

Q. Now, where did they begin to throw stones in the direction of the plant?

A. At that point where they struck that switch at that curve.

Q. What kind of stones were they throwing?

A. That I don't know.

Q. Didn't you see them?

A. I couldn't state whether they were stones or what they were, but they were missiles.

Q. Can't tell whether stones or bricks?

A. No, sir.

Q. Or cinders, or what?

A. Could not.

Q. Did all of them throw?

A. No, sir.

Q. How many of them?

A. I don't know.

Q. A good many of them?

A. Quite a few, yes.

ing these missiles at?

A. In the direction of the plant.

Q. In the direction of it?

A. Yes, sir.

Q. What do you mean by that?

A. Well, towards the plant.

Q. Where did these missiles fall as they were thrown in the direction of the plant?

A. It was utterly impossible to reach the plant from where they stood with these stones or whatever they threw.

Q. How near did they come? Were they thrown in your direction?

A. Well, naturally I being on the office steps there, I should conclude so.

Q. You conclude they were thrown in your direction. How near did they get to you, these missiles?

A. These missiles, why, they didn't get halfway.

Q. A great many of them, were there?

A. Quite a few; yes, sir.

Q. Did you gather those missiles up after the fracas was over?

A. No, sir.

Q. Do you know what became of those missiles after the fracas was over?

A. I do not.

Q. Did somebody pick them up and carry them away?

A. Could not say.

MR. McCARTER: The missiles are like the cartridges, they have disappeared.

MR. WESCOTT: Do you know who caused their disappearance, Mr. Attorney General?

THE COURT: Proceed.

Q. Did they throw clubs and stones at you?

Q. What part of the plant were they throw-

A. There were sticks flying; yes, sir.
Q. In the direction of the factory?
A. Yes, sir.
Q. How many of those?
A. Quite a few.
Q. About how many?
A. I haven't any idea.
Q. How near did they come to you?
A. Not as far as the other missiles.
Q. They didn't get quite as far as the other missiles?
A. No, sir.
Q. Was the ground covered with these sticks and missiles?
A. No, sir; not to my knowledge.
Q. Do you know what became of the sticks or missiles?
A. I do not.
Q. This is important. Can't you give us an idea of the number of sticks that were thrown toward you?
A. No, I cannot.
Q. Were there a good many of them?
A. Quite a few; yes, sir.
Q. When you saw this crowd up one-eighth of a mile from the depot, they had, you imagine, about 100 sticks?
A. Yes. Fully that. More than that.
Q. And after they got through heaving sticks towards the factory, about how many were left of the crowd, have you any idea?
A. I haven't any idea.
Q. But a great many?
A. Yes, sir.
Q. What did you people do while they were heaving these sticks and stones there?
A. Did nothing.

Q. Absolutely nothing?

A. Nothing but stand there and watch them coming down the tracks.

Q. Coming down from the beginning of this "Y", all this crowd, tell us what they did from that moment on? You have got them to the "Y" throwing stones and sticks half way to the factory. Now from that point what did this crowd do?

A. Why, they continued marching down the tracks yelling and brandishing sticks and throwing their arms in the air.

Q. Such sticks as were left they kept brandishing?

Q. And they marched and brandished such sticks as were left up to that distance?

A. Up to that railroad station there.

Q. You were still standing, with unknown or unrecognized persons around you?

A. Yes, sir.

Q. At the gate?

A. Yes, sir.

Q. When they got to the depot what did they do?

A. They stood there in a body, circling back and forth, going around, walking around each other. They seemed to hold sort of a meeting there.

Q. Then what?

A. Then after that the ties were placed on the track.

Q. How many?

A. Well, I should judge there were two ties at least.

Q. What else was placed on the track?

A. There was a piece of iron we found there.

Q. How big a piece of iron.

A. Part of a rail.
Q. How big?
A. Nine feet.
Q. What became of that?
A. That was thrown to one side.
Q. You still stood there on the corner?
A. Yes, sir.
Q. With these unknown persons about you?
A. Yes, sir.
Q. After they got these obstructions placed on the track, what did they do?
A. Why, one of these men pulled off his sweater and put it on a stick and waved it in the air and then stuck it in the ground in front of these ties.
Q. Did you see the train at that time?
A. No, sir.
Q. What did they do after they got that done?
A. Just about that time a train was coming up, I should, because they started to run down in that direction.
Q. And you still stood there with these unknown men about you?
A. We were getting ready to go out there.
Q. You were getting ready to go out there?
A. Yes, sir.
Q. What for?
A. To afford any protection these men getting off this train.
Q. How do you know they needed protection to get off the train?
A. Simply because these men were in a violent mood at that time. They were going down to that train there.
Q. How do you know they were in a violent mood?
A. You could tell from their gestures.

Q. Were they saying anything that you could understand up to that point?

A. Nothing we could understand; no, sir.

Q. At what point did you leave, with unknown people, in this position at the gate?

A. Why, I left when the train was almost to the obstruction.

Q. Who left with you?

A. That I do not know.

Q. How many left with you?

A. Could not say.

By THE COURT:

Q. When you say you could not say, do you mean by that that you do not know?

A. No, sir.

Q. Then you had better say that.

By MR. WESCOTT:

Q. The men that left with you, did you ever see any of them before?

A. Yes, sir.

Q. Where did you see them?

A. Around the plant.

Q. What were they doing around the plant?

A. They were doing guard duty.

Q. Oh, then they were deputies, were they?

A. Yes, sir.

Q. Very well, then deputies left with you?

A. Yes, sir.

Q. Only you don't happen to know who they were?

A. No, sir.

Q. Were any of them armed?

A. That I couldn't say.

Q. Why not?

A. Because I did not observe that.

Q. When you went out to escort employes?
A. Yes, sir.
Q. Into the works. Did you escort them?
A. I did not.
Q. What did you do?
A. I was pretty busy taking care of myself.
Q. When you got over there, what did you do, over at the depot where the train was.
A. Where the train was?
Q. Yes.
A. Well, we told this mob to go back, to get back away from the train. We tried to take these obstructions away.
Q. What?
A. When we were over we told this mob to step back, to go away from there, and we started to take this obstruction away, when they jumped on to us, or jumped towards us with their sticks.
Q. Did you try to remove the obstruction yourself?
A. No, sir.
Q. Who did?
A. That I couldn't say. Somebody along there.
Q. You said we. Who was it?
A. The deputies.
Q. What deputies were they?
A. That I couldn't say who they were.
Q. Why not?
A. I didn't recognize them.
Q. Well, you saw them?
A. Yes, sir.
Q. And you had seen them since the 5th of January, hadn't you, off and on?
A. Yes, sir.
Q. And you saw these deputies move those ties?

A. I did not.

Q. Well, you saw them attempting to move the ties?

A. I did.

Q. And you can't tell who they were?

A. No, sir.

Q. Are any of these the men (indicating defendants)?

A. I don't think so. I don't recall these men at all.

Q. Did you see any of these?

A. I saw them around the plant.

Q. You did not see them there around the depot?

A. No, sir.

Q. Not one of them?

A. Could not say.

Q. Well, do you say they were not there?

A. I wouldn't say so, no.

Q. Did you know a single deputy that was at that depot?

A. No.

Q. I suppose that is because you were so busy taking care of yourself?

A. I was.

Q. Very well. Well, you were busy protecting yourself?

A. Yes, sir.

Q. And you were engaged in that business all the time you were there?

A. Yes, sir.

Q. And in order to protect yourself you fired how many shots in the air?

A. I fired three shots in the air.

Q. Well, did that protect you?

A. Well, it didn't protect me, no. It scared these men away from me to keep them back.

Q. Well, did you succeed in protecting yourself in firing these three shots in the air?

A. Yes, I did.

Q. After succeeding in protecting yourself by firing three shots in the air, what did you next do?

A. I didn't do anything else then.

Q. Just stayed there?

A. I stood right where I was hit. That is when I was hit with the stone.

Q. I am not talking about that.

A. I stood still, yes.

Q. How long did you stand there?

A. Possibly four or five minutes.

Q. Then what did you do?

A. Came back to the plant.

Q. Alone?

A. No, sir.

Q. Who went back with you?

A. There was other deputies.

Q. What deputies?

A. Other deputies.

Q. What deputies?

A. I don't know.

Q. How many went back with you?

A. That I couldn't say.

Q. Any of these go back with you?

A. I couldn't say positively.

Q. You saw them?

A. I saw them; yes, sir.

Q. And they were the same deputies you had been seeing since the 5th of January, weren't they ?

A. Yes, sir.

Q. And you could not recognize all of them?

A. I could not.

Q. Why not?

A. Because the excitement was so much, that

I was not paying attention to anybody but myself.

Q. You had protected yourself by firing three shots into the air. You stood there four or five minutes to collect your excited faculties. How long does it take you to get over an excitement?

A. That I couldn't say.

Q. Well, you had had experience of these things before?

A. Yes, sir.

Q. And you had at least four or five minutes while you were standing there alone, after succeeding in protecting yourself, and then you walked back into the factory with other deputies?

A. Yes, sir.

Q. Were you so excited on the way back you could not recognize these deputies?

A. These deputies were behind me when I went back.

Q. That is the reason you did not recognize them, is that so?

A. In all probability.

Q. Did they stay behind you all the rest of the time?

A. Very nearly so, yes.

Q. Well, when they did not very nearly stand behind you, did you recognize any of them?

A. I don't believe I could recall one of them.

Q. When you got back to the works with these deputies, what did these deputies do?

A. That I couldn't say. I went into the office, into the back room of the office there, a little side room.

Q. You don't know where they went, or what they did?

A. I presume they had gone to bed.

Q. They went to bed?

A. That is, the night men.

Q. No. The men that went from the depot back with you to the works, what did they do?

A. I don't know. They scattered out to their different positions on the plant.

Q. Did they still keep at your back while they were scattering into position?

A. I was inside at that time.

Q. You were inside of the house, and that is the reason you could not recognize them?

A. I could not see where they went to.

Q. You say that somebody fired four or five shots. Where were you when those shots were fired?

A. On the platform.

Q. Where were those shots fired from?

A. From the direction of the depot.

Q. From the direction of the depot?

A. Yes, sir.

Q. Then the crowd had got to the depot?

A. Yes, sir.

Q. And where were the shots fired towards, you?

A. I could not say.

Q. Didn't you see the smoke from the guns?

A. I did.

Q. About how many revolvers or guns did you see the strikers have?

A. I saw one to my knowledge.

Q. Was he the fellow that fired the four or five shots?

A. That I could not say.

Q. Didn't you see any more than one?

A. No, sir. I was watching that gun.

Q. What gun?

A. That one that striker had.

Q. That one that the striker had?

A. Yes, sir.

Q. What kind of a gun was it?

A. It was a revolver.

Q. Let us spend just a moment now on your getting wounded. Where were you at the time you got hit?

A. Why, I couldn't say just exact distance, but I was pretty close over there to that station there. A little more than half way.

Q. Anybody with you at the time you got hit?

A. Men were around me, yes.

Q. What men?

A. Deputies, strikers.

Q. How many of them?

A. That I could not say positively.

Q. Who were the deputies that were around you then?

A. I could not say.

Q. They were not back of you?

A. They were all around. There were strikers all around, and these deputies, were all mingled together.

Q. Maybe that is the reason you could not recognize the deputies, because they were mixed up with the strikers, is that correct?

A. No, sir.

Q. Could you recognize one of the deputies there?

A. I wasn't paying attention to the deputies.

Q. You were surrounded by deputies and strikers?

A. Yes, sir.

Q. When you got hurt?

A. Yes, sir.

Q. How close were they to you, these deputies and strikers, when you got hurt?

A. Well, we were surrounded pretty close. I should judge within six or eight feet.

Q. Was there a circle of them around you?

A. No. They were mingled. They were all mingled up together.

Q. I mean around you?

A. No, not around me, they weren't all around me.

Q. How nearly were you surrounded?

A. I couldn't say. I was paying attention in front of me, watching these people in front of me.

Q. Do you want to recall your statement that you were surrounded with deputies and strikers?

A. Well, by surrounded, I meant on both sides of me. I wouldn't say in the rear of me.

Q. Kind of a semi-circle then?

A. Yes, sir.

Q. There you were in about ten feet from a half moon—

MR. McCARTER: Call it a crescent.

Q. Yes, a crescent shaped crowd, that is correct, is it?

A. Yes, sir.

Q. How long did you remain standing in that position?

A. I didn't remain standing there at all.

Q. You were ten feet away, about. How did you get hurt?

A. Hit with a stone or a missile that was thrown.

Q. Hit with a stone or a missile?

A. Yes, sir.

Q. Which was it, a stone or a missile?

A. It was a missile.

Q. What kind of a missile?

A. Could not say.
Q. Didn't see it?
A. No, sir.
Q. Didn't come so swift you could not see it?
A. No, it didn't.
Q. And it hit you where?
A. Hit me in the ankle.
Q. Lay you up? Knock you down?
A. Knocked me down.
Q. How long did you stay down?
A. I got right up.
Q. When this missile hit you and knocked you down, was this semi-circular crowd still around you?
A. They were in front of me.
Q. Well, in front of you?
A. Yes, sir.
Q. Did they do anything to help you?
A. No, sir.
Q. How long did that crowd stand there in that position?
A. They were not standing there at any time.
Q. They just happened to be in that shape when you got hit?
A. When I saw them, yes, when I took this particular notice.
Q. Did this missile come out of this crowd that was in front of you?
A. It appeared to, yes, sir.
Q. So somebody amongst the deputies or somebody from a crowd that was a mixture of deputies and strikers, about ten feet away from you, hit you with that missile?
A. I didn't say the deputies were in front of me.
Q. Well, were they behind you?
A. The deputies were on both sides of me.

Q. Where were the strikers?

A. They were coming around us.

Q. You made a statement in this case, didn't you?

A. Yes, sir.

Q. When you were arrested and furnished bail, what address did you give?

A. I believe I gave an address on Plain street.

Q. Where?

A. Plain street, Newark.

Q. What number?

A. I think it was 153, if I am not mistaken.

Q. 153?

A. Somewheres in that vicinity.

Q. Wasn't it 281?

A. It may have been.

Q. Why did you give that address?

A. Because I didn't want my people to know the predicament I was in.

Q. Who were your people?

A. The people I was living with.

Q. Who are they?

A. The people that I lived with there in Newark.

Q. Who are they?

A. E. W. Oxenford.

Q. What did he do?

A. That I couldn't say.

Q. Don't know what he does; isn't Oxenford one of O'Brien's men?

A. I don't believe so.

Q. Don't you know that he has worked for O'Brien?

A. He may have worked for O'Brien.

Q. Didn't he get you?

A. He did not.

Q. How long did you live with that fellow in Newark?

A. I lived with him about two years or three years.

Q. And you don't know what he does?

A. I am not certain; no, sir.

Q. Do you and he occupy the same house?

A. Yes, sir.

Q. Anybody else in the house?

A. His wife.

Q. Anybody else?

A. There is another family.

Q. What are their names?

A. That I don't know.

THE COURT: Did you give your correct name?

A. Yes, sir.

Q. (Handing statement to witness.) You made that statement, did you, and signed it? Is that your signature?

A. I haven't observed yet; I wish to observe it.

THE COURT: Look at the signature first; if you didn't sign it, there is no use reading it.

A. Yes, sir.

Q. Is that the correct statement.

A. (Witness reads paper.) No, it is not.

Q. It isn't correct?

A. I don't believe that is the statement I made out.

Q. It is the statement you signed?

A. I signed a statement, but I don't believe I made these remarks in there.

Q. Let me read it to you. "R. J. Wallace, deputy sheriff says: I have been here since"—I

want to ask you when you made this statement; on the morning of the shooting?

A. On the morning of the shooting; yes, sir.

Q. What day?

A. On the 19th?

Q. About an hour or two after?

A. Possibly a little longer than that.

Q. Possibly a little longer than that?

A. Possibly a little longer than that.

Q. (Reading.) "I have been here since January 5th employed by Sheriff Houghton as a deputy to protect the Williams & Clark plant"—Just follow me and see if I read it correctly—"There was about forty of us here this morning altogether, of whom about 25 were out by the tracks; until last night there has been no violence at all, except a few stones thrown which did no damage. There were crowds every morning about from thirty to fifty who block the road and prevent any one coming to the plant. The electrician was stopped one morning, and he couldn't get here until late in the morning. Last night about nine o'clock or after I was just going to bed in the carpenter shop where we were living, when I heard about four or five shots; I ran out but didn't see anything. None of the guards saw any one, but we all heard men running away behind the oil car. This morning I came on duty between six and six-thirty and relieved the night force, which was stationed at the front of the office, main entrance to the plant; about seven-forty I went back to the carpenter shop to get breakfast. Someone called that a mob was coming from the town. I ran to the office and I woke up the night deputies and distributed the night sticks. Some deputies had guns. I had one 38 revolver. I saw at least three pump guns, which

the deputies had. We gathered at the main entrance at least 25 of us ready to go out. Mr. Patterson was in charge. The sheriff was not here. He was at the other plant I think. The crowd was coming down both tracks. That is the main track and the spur which runs nearly parallel—nearly five hundred. They were yelling and shouting. They had sticks and iron bars, almost every one in the crowd had something in his hand. They collected about the W. & C. station gesticulating and throwing stones at us. We expected the superintendent and three clerks, or other employees on the train. I saw four or five piling ties and other obstructions on the track; one took a red sweater put it on a stick, and stuck it in the ground to flag the train. We saw the train come and went over to the station. Six or seven started first to go to the corner of the fence to watch what happened, as we couldn't see well from the platform. This was about 8.10 as the train was late. The mob had been there for twenty minutes or half an hour. When the train came the mob split up to let the train through. The ties were still on the track and the train slowed down and we all went to the corner of the fence. The ties were about thirty feet northeast of the station. The train didn't get into the station, but had to stop before it got to the ties. When it stopped they yelled then threw sticks and stones at us as we were going towards the train in a body to protect the superintendent and his clerks. No sticks or stones hit us. We were walking, not running. I heard four or five shots which were fired by the mob on the far side of the track. Those nearby didn't shoot. We didn't hurry, but went right to the depot. We told the crowd to disperse and they shouted,

and there was several more shots from the crowd back of the station. I didn't see any one shooting. We fired a volley in the air and the crowd scattered and I saw two men with revolvers, one very large, looked like a 45. I didn't see them shoot, but they had guns pointed in our direction a little elevated. The crowd altogether shot about 25 shots, the bullets whistling nearby. Then the crowd was running and we fired into the air, and into the ground, and we followed for fifty feet about and then came back. I saw no one hit, not even with a stick. Then all of us came right back here. I fired three shots. My address is 281 Plain street, Newark, and I am employed by Jerry O'Brien.

(Signed) R. F. Wallace."

Q. Is that statement correct or not?

A. Some excerpts in there are not correct.

Q. What for instance?

A. About the distribution of the night sticks. I had nothing to do with that. I don't believe it refers to that. That is all.

(Statement marked in evidence Exhibit P-16.)

RE-DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Wallace, you made that statement to the Prosecutor's representative?
A. I did.
Q. You made it voluntarily?
A. Yes, sir.
Q. Nobody had to draw it out of you?
A. They did.
Q. Nobody promised you anything?
A. No, sir.
Q. And when you were notified you were to be placed under arrest, state whether or not you came to New Brunswick voluntarily?
A. I came voluntarily.
Q. And you gave bond in the sum of $2,000?
A. I did.
Q. On the charge of manslaughter?
A. Yes, sir.
Q. And were you re-arrested—What did you do and where did you go after giving bonds?
A. Went back to Roosevelt?
Q. And then you were re-arrested a couple of days afterwards?
A. Yes, sir.
Q. And have been in jail ever since?
A. Ever since.
Q. All the deputies that were at the plant were not arrested, were they?
A. No, sir.
Q. When you left that plant or office that morning, did you intend to shoot anybody?
A. I did not.

MR. WESCOTT: I object.

Q. And did you promise or agree to shoot anybody?

A. No, sir.

MR. WESCOTT: I object.

THE COURT: I will allow that. The jury will have to be governed by all the evidence in the case, but I will allow this.

Q. And after you got out of the plant and before you returned to it, did you shoot or combine with anybody to shoot anybody?

A. No, sir.

Q. Well, did you yourself?

A. No, sir.

RE-CROSS EXAMINATION:

By MR. WESCOTT:

Q. Who went your bail?

A. The Surety Company, I believe, from New York.

Q. You got them to go your bail, or who?

A. That I couldn't say.

MR. STRICKER: I object to that as immaterial.

THE COURT: That is quite proper. You have examined this witness about giving bail. I think the state has a right to go into that question now to find out why he came here.

Q. Who?

A. I don't know.

Q. Was this statement which has just been shown to you given to the prosecutor, or Mr. Tracy Voorhes?

A. Mr. Voorhes, the gentleman here.

Q. He put all the questions to you?

A. He did.

Q. And reduced the answers to writing?

A. He did.

By MR. WESCOTT: How long you known Voorhes.

A. Never knew him.

Q. Never knew him before?

A. No, sir.

Q. You have no difficulty in recognizing him here?

A. None whatever.

Q. Not the same difficulty you have in recognizing the deputies?

MR. STRICKER: We object.

MR. WESCOTT: That is all.

JAMES B. WILLIAMS, a witness produced on behalf of defendant, being duly sworn according to law, on oath saith:

DIRECT EXAMINATION:

MR. WESCOTT: I offer the statement of Bavier.

THE COURT: Any objection to it?

MR. McCARTER: No, sir.

THE COURT: Let it be admitted.

By MR. STRICKER:

Q. Mr. Williams, how old are you?

A. Thirty-five.

Q. Where is your home?

A. My home at the present is in the county jail.

Q. Where was your home on January of this year?

A. In January of this year on the 5th of January, I was at Carteret.

Q. And before you came to Carteret—

THE COURT: Where was your home before you came to Roosevelt?

A. I lived in New York City.

Q. And you heard that O'Brien's Agency was desirous of employing guards and deputies to go to Roosevelt?

A. I did; yes, sir.

Q. Did you go to the agency?

A. I did.

Q. And obtain employment?

A. I did.

Q. As guard?

A. As a deputy sheriff.

Q. As a deputy sheriff?
A. Yes.
Q. Were you sworn as a deputy sheriff?
A. Yes, sir.
Q. And at the time or before the time you were sworn you told an untruth about your residence?
A. I did.
Q. And why did you tell that untruth?
A. My understanding was—
THE COURT: No, answer the question.
Q. Why did you tell an untruth about your residence?
A. To obtain this work as a deputy sheriff.
Q. Now, after you—And you assumed the duties of a deputy sheriff when?
A. On the 6th day of January.
Q. Had you ever acted in that capacity before?
A. I did.
Q. Where?
A. In the town of Bonhampton.
Q. Is that in this county?
A. Middlesex county.
Q. For the present sheriff or his predecessor?
A. For the sheriff who was in office previous to Sheriff Houghton. Sheriff Bushweiler.
Q. Directing your attention to the morning of the 19th of January, state whether or not you heard anything regarding any demonstration that was alleged to have taken place at the Liebig Plant about seven o'clock?
A. I did hear the news of that demonstration.
Q. And where were you at the time you heard the news?
A. I was at the platform of the office, of the Williams & Clark plant.
Q. And what were you doing?

A. I was on post doing my duty as a deputy sheriff.

Q. And did you have a view of the railroad station and the vicinity?

A. I did; yes, sir.

Q. What did you do there?

A. I can't answer that question, unless you ask me what time.

Q. Tell us what occurred at that place or that morning, as you can remember?

A. Yes, sir. I was on the front platform as a deputy, day deputy. There was a night and day force. I was one of the day force, and I relieved the night man who had that position at between 6.30 and a quarter of seven in the morning. And at 7.15 or 7.20 someone in the office had received a telephone message which told about a riot and trouble in the vicinity about seven o'clock at the other plant, known as the Liebig plant on the railroad, and around the plant at Liebig. That is the way it came in.

Q. All right. Now directing your attention to the Williams & Clark station in the neighborhood of eight o'clock, was there anybody there?

A. Yes, sir.

Q. Who was there?

A. I was on the platform, and there was probably three or four other deputies with me on the platform.

Q. No, I don't know, don't want to know anything about the platform just now. I want to know what was occurring or taking place at the Williams & Clark railroad station, if you can tell?

A. Yes, sir. About ten minutes before that my attention was attracted to a large body of men coming down the railroad track, the main track, and they were marching down, and when they got

fully into view as they spread out along the track in bodies, I seen this crowd of men. They appeared in my opinion about four hundred.

Q. Did they have anything in their hands?

A. Why I should judge about three-quarters of this mob as a whole had something in their hands.

Q. What did they have, what did it appear to you that they had in their hands?

A. Anything that could be used as a club. Pick handle, handle of a broom, baseball bats, pieces of iron.

Q. Was this mob noisy?

A. We could hear a noise. We heard noise or yelling as though from the men, the men were yelling, as they came down.

Q. Well now—

A. As the crowd went toward the station where I was, I could hear them distinctly.

Q. Did you hear, what could you hear?

A. I could hear loud noises in foreign language which I didn't understand.

Q. Did you see anything on the railroad tracks about that time?

A. Just at that time; no, sir.

Q. How soon afterwards did you see anything on the railroad tracks?

A. Probably about five minutes.

Q. What did you see on the railroad tracks?

A. These men formed in a mob around the railroad station and there was a great deal of excitement there, waving their clubs in the air as they went by the office. They had thrown and yelled out many threats towards the men who stood with me on the office platform.

Q. Well, now—

A. As the crowd stopped at the railroad sta-

tion some of these men, probably between twenty and thirty I should judge, moved a little north of the station and they began to drag obstructions on to the railroad track. I seen about three—three at least, separate pieces that were placed across the track, on the rails across the track, one was an old heavy wooden railroad tie; the other looked like the old stump of a tree, and the third article which I seen was a piece of iron rail, which I believe to be a guard rail—it is used as a cross-over—it is used as a piece of iron in a cross-over, where tracks cross each other. It was about eight feet long and slightly bent, slightly bent in the middle, about eight feet long, but with a bend in it. Two or three men—probably three or four in the crowd, was scattered around as they put these obstructions on the track. About three or four men placed this wooden tie and the other log of wood across the track. Then one man took off a red sweater and he stuck it up on a stick, and pressed this stick into the ground, or on the ground, so it would stand up.

Q. Let me interrupt you just a moment. Did you notice any deputy at the Williams & Clark plant during your stay wearing a red sweater?

A. I never did; no, sir.

Q. Yes.

A. There were no sweater men there. They were all men with overcoats, ordinary dress. I didn't see a man with a sweater amongst the deputies.

Q. Go on. You were saying you saw a man take a sweater off and put it on a pole to stop the train. What happened then?

A. Just about that time there was some shots fired.

Q. Where from and by whom?

A. In the vicinity of the railroad station, in front of the railroad station, and between the railroad station and where this obstruction was.

Q. And where were you at the time the shots were fired?

A. The first shots were fired as I stood on the office platform.

Q. And then what did you do?

A. I waited a while because I wanted to wait for the train. The train was due at eight o'clock. We called it the eight o'clock train.

Q. Where was the train then?

A. The train hadn't come in sight. It was a little late. I don't know just how late. Probably five or six minutes. I waited until I seen the engine approach the obstruction and then I started out to meet this eight o'clock train.

Q. Did you start out alone, or did anybody start with you?

A. There was other men went out, but as far as I was concerned, I went alone.

Q. Did anybody ask you to go out?

A. No, sir.

Q. Did you ask anybody to go out?

A. No, sir.

Q. Did you go under anybody's orders or directions after you got out?

A. I didn't.

Q. Proceed.

A. I started out towards the train as I had done nearly every morning since the 5th or 6th of January. It was my duty to meet that train and escort Mr. Rossman, the superintendent of the plant, from the train to the plant, to the office.

THE COURT: You say it was your duty?

A. Yes, sir.

Q. Proceed.

A. So when the train stopped I started out and got out a short distance from around the corner of the fence and there was a few of the deputies out there, and I seen one man come running back in, and a riot started, and I wished to do what I could for Mr. Rossman. There were other men on the train that came in every morning on this train, but my particular idea was the superintendent. I went out every morning so I could get him safe into the plant; when I got out 20 feet beyond the corner of the fence, a great number of shots came from this crowd of strikers, I should say about fifteen or twenty shots.

MR. WESCOTT: How many?

(Answer repeated by the stenographer.)

Q. Did you see Mr. Rossman?

A. Mr. Rossman didn't come on the train that morning.

Q. Go ahead and tell us what happened after the fifteen or twenty shots were fired?

A. The train crew came down in the front of the train and with the help of men who were in plain clothes, these obstructions were removed.

Q. Who fired the fifteen or twenty shots before the train came?

A. This mob of men, whom I had concluded to be strikers.

Q. Were there any deputies at that point that you could see?

A. No, sir; no deputies near the station.

Q. Did you fire at anybody?

A. I didn't.

Q. Did you have any firearms at that time?

A. I had a revolver; yes, sir.

Q. Did you tell anybody to fire?

A. I did not.
Q. Did anybody tell you to fire?
A. No, sir.
Q. Now after the shooting was over, you went back to the office?
A. I did.
Q. Did you meet Eddie Conlon there?
A. Some time later.
Q. What is that answer?
A. A short time later.
Q. How much later?
A. I should judge about, my best memory is, I saw Conlon for the first time that day at 8.45.
Q. State whether or not he told you at the time he heard shots and took good care not to come in the office until the crowd had gone back up to the railroad?

MR. WESCOTT: I object.

THE COURT: Was he asked about that?

MR. McCARTER: He was.

THE COURT: I am not so sure about that.

MR. McCARTER: I can show you the place if you have any doubt about that.

MR. WESCOTT: I guess that is correct.

THE COURT: Then you can answer that.

Q. (Repeated.)
A. I did.
Q. And how long was that before Conlon came into the station?

THE COURT: He said 8.45. You don't want us to repeat that, do you?

MR. STRICKER: I guess that is all.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Where were you born?
A. Boston, Mass.
Q. When?
A. December 18, 1880.
Q. How long have you lived in Boston after you were born?
A. I lived in Boston off and on for twenty years.
Q. What did you do in Boston when you lived there?
A. I worked as a clerk.
Q. At what?
A. In the produce market and publishing houses.
Q. How long?
A. Well, my first job as an office boy, and I continued that, off and on at that kind of work for some years.
Q. And you were how old when you left that employment?
A. Well, I had many jobs as a boy, like any other boy has. I switched around at different jobs.
Q. (Repeated by steenographer.)
A. I answered that question by saying I continued as an office boy and a clerk, various diffeerent houses for a long time.
Q. For how many years?
A. Why, I should judge about eight years.
Q. How old were you then when you quit?
A. About 18 or 20.
Q. You worked in different places up until you were 18 or 20?

A. Yes, sir.

Q. Where did you go then?

A. I worked in Washington Market as clerk, in Boston. I worked in the Maine woods as a lumberman one winter, worked at various odd jobs, until I finally went railroading.

Q. How long did you work in the market in Boston?

A. I should judge about two years.

Q. Did you ever serve a term in prison?

A. No, sir.

Q. Well, you worked there about two years in the market?

A. Yes, sir.

Q. Then where did you go?

A. After leaving the market business I put in one winter in the Maine woods as a lumberman.

Q. What winter was that?

A. I should think that that was the winter between 1904 and the spring of 1905.

Q. Where did you go from the Maine woods?

A. I came back to Boston, and from Boston I went to New York.

Q. You went back to Boston?

A. Yes, sir.

Q. What did you do in Boston?

A. I purchased what things I needed. I had my winter's money from the Maine woods. I bought what I needed, and had a short vacation, as my memory runs now, and then I went to New York.

Q. When did you go to New York?

A. I went to New York about February or the first of March.

Q. Of what year?

A. 1905.

Q. How long did you stay in New York?

A. I stayed in New York off and on since that time.

Q. What did you do in New York?

A. Why, I have spent about five or six years railroading there.

Q. Doing what?

A. Railroading.

Q. For whom?

A. For the Interborough Rapid Transit Company.

Q. What kind of railroad work did you do?

A. I was a conductor on the elevated.

Q. For how many years?

A. About five years.

Q. Then you came down here?

A. I don't understand that question, sir.

Q. Did you then come here to New Jersey?

A. I left that job five years ago. I stayed there five years.

Q. I did not understand you. I thought you had been there ever since?

A. Oh, no. I said I stayed with the railroad company about five years.

Q. Then when you got through with the railroad company where did you go?

A. I remained in New York, except for a trip about off and on.

Q. For how long?

A. Since that time my home has been in New York.

Q. And where did you take your trips to?

A. Why, for various railroad companies around the country. Went working where I could get a job.

Q. Where?

A. I worked for the B. & O., Third Division, in the mountains in West Virginia. I worked for

the Oregon Short Line in Ogden, Utah. I worked for the Pennsylvania Railroad on more than one occasion, I worked for the Pennsylvania Railroad.

Q. More than one occasion?

A. Yes, sir. I worked twice for the Pennsylvania Railroad, to my knowledge.

Q. Where else did you work?

A. Well, that is all I can bring up offhand.

Q. Did you ever have anything to do with strikes?

A. Yes, I have had lots to do with strikes.

Q. When was the first one?

A. The first one was the Interborough Rapid Transit.

Q. What did you do in that?

A. I was a conductor on the trains on the west side elevated.

Q. Have you ever had anything to do in the capacity of a strikebreaker?

A. No, sir.

Q. Did you ever have anything to do in the capacity of a guard?

A. Yes, sir.

Q. When was the first time?

A. The first time I ever worked for a guard was about two years ago.

Q. Where?

A. Sheriff Bolschweiler, in Bonhamtown, New Jersey.

Q. When was the next time? By the way, who was the Deputy Sheriff at that time?

A. Who was the Deputy Sheriff?

Q. Yes?

A. I don't know. I can't answer that question.

Q. Where was the next experience you had as guard?

A. The next experience I had, I believe, was this experience at Carteret, New Jersey.

Q. Never had any other?

A. I will not be positive.

Q. Why not?

A. Because I don't remember any other as a guard.

Q. Well, did you have any other experience in any capacity with a strike?

A. Yes, sir.

Q. Where?

A. Oh, I have been on quite a number of—been employed quite a number of times where there has been strikes.

Q. To do what?

A. Well, when men were needed and advertised for, I applied for employment, and if I could get it I got it.

Q. What kind of employment did you do in relation to strikes?

A. Do I have to answer that question, your Honor?

THE COURT: Yes, answer it.

A. Whatever men were needed to do, that I done.

Q. Acting as a strikebreaker?

A. Well, I will ask his Honor to inform me if I have to be branded as a strikebreaker by the Attorney General. Now, I believe that a man—

THE COURT: No argument. Your counsel will take care of you.

A. Do I have to be branded as a strikebreaker by the Attorney General before this jury?

THE COURT: It is quite improper for you to talk that way to me. Your counsel are able to

take care of you. The Attorney General has put a question to you. You can answer it yes or no.

A. Yes, sir.

Q. (Repeated by stenographer)?

A. No, sir.

Q. What kind of work did you do about these strikes?

A. Whatever I was employed—wherever I could get employment that was honest, and men were needed, I would work, and I did work.

Q. That is the only answer you wish to make?

A. That is the only answer I wish to make to that question; yes, sir.

Q. Is there any reason why you did not wish to make a different answer?

MR. STRICKER: We object to that question as put now.

THE COURT: Upon what ground?

MR. STRICKER: It has been asked and he has answered. The Court has instructed him to answer and he has answered.

Q. (Repeated by stenographer)?

THE COURT: I will allow that question. You can answer that yes or no.

A. I am not a strikebreaker.

Q. What?

A. I am not a strikebreaker.

Q. Is there any reason why you do not want to answer that question in any other wise than you have?

A. Yes, there are other reasons.

Q. Very well. Those reasons you do not care to divulge?

A. I will give you the reason if you wish to have it.

Q. Well, give us the reason?

A. I do not wish the Attorney General, or the counsel, to prejudice this jury against me by branding me as a strikebreaker.

Q. We do not want to prejudice the jury against you.

A. That is my reason.

Q. That is the only reason you have?

A. That is the only reason. I have no shame of taking employment that is honest, wherever I can get it; yes, sir.

Q. How many times have you been connected with strikes, do you remember?

A. I should say roughly eight or ten times.

Q. Where was your home in New York?

A. My last permanent home was at 604 West 140th street.

Q. Did you ever live at 160 Bleecker street?

A. For a night at a time; yes, sir.

Q. Or at 39th street and Seventh avenue?

A. No, sir. Not to my memory have I ever been at 39th street and Seventh avenue.

Q. Or at 546 West Broadway?

A. I have been in that hotel, but not to stay or live there.

Q. What hotel is that?

A. It is the Lafayette Hotel.

Q. Have you been at Mills Hotel?

A. Mills Hotel is the address you gave of 160 Bleecker.

Q. Have you been there?

A. It is a lodging house for men.

THE COURT: Oh, answer the question.

A. Yes, sir.

Q. Do you know Wheatcroft?

MR. McCARTER: What is that, two names, Mr. Wheat Croft?

MR. WESCOTT: No, it is one name.

Q. Were you ever employer as a deputy before? Ever act as a deputy?

A. Once before. I answered that question.

Q. That was here in this county?

A. In Bonhamtown, New Jersey.

Q. Were you working for O'Brien at that time?

A. No, sir. I was working for the Sheriff at that time.

Q. Who furnished you to the Sheriff?

MR. STRICKER: Is this material?

THE COURT: Yes, I will admit it.

MR. STRICKER: We object to it, and pray an exception.

Exception allowed. Let it be sealed.

JAMES J. BERGEN,
Judge.

A. I think the firm of Waddell & Mann, sent the men to the Sheriff of Middlesex county, Sheriff Bolschweiler.

Q. Were your duties as Deputy Sheriff specified?

A. On which occasion?

Q. On this last occasion?

A. My duties were—

Q. Were they specified by anybody?

A. No, no special specifications were given.

Q. Did anybody instruct you about your duties?

A. The Sheriff, after swearing me in, told me that I must use discretion, if there was any cause —if there was any trouble encountered, that he expected me to be a gentleman at all times while acting as a Deputy Sheriff.

Q. Did he tell you to keep within the plant?

A. No, sir.

Q. Did he tell you to go out?

A. No, sir.

Q. Have you talked about your testimony?

A. Yes, sir.

Q. You and the other deputies are confined in the same room here in the County Jail?

A. Confined in the same department of the County Jail, yes, sir.

Q. You eat together and talk together and spend your days and nights together?

A. Yes, sir.

Q. And you have talked your testimony over, haven't you?

A. We have talked of everything that we could think of that might have anything to do with this case.

Q. Everything that you could think of?

A. Everything that we could think of that would help us.

Q. Haven't laid any plans?

A. No plans have been laid, no, sir. The only plan was to tell the truth. That the truth could not hurt us.

Q. I was just going to ask you that.

A. I answered the question.

Q. You took it out of my mouth. So all your plans and declarations amongst yourself were first to speak the truth, and next to tell the truth.

A. And next to tell the truth; yes, sir.

Q. Well now, when you were there at the office that morning were there other deputies with you?

A. Yes, sir.

Q. Who were they?

A. I can't remember who were there.

Q. How long have you known those deputies?

A. The majority of these men I have never seen before the 5th day of January.

Q. Some of them you had seen often before the 5th day of January?

A. One or two.

Q. Where did you see them?

A. In New York City.

Q. How long had you known them?

A. Oh, a matter of months. A short time.

Q Who were they?

A. James Bavier was one whom I knew by sight. He was my friend. And Mullen, I knew him by sight.

Q. You knew him by sight?

A. I knew Mullen by sight, yes, sir. I had never worked with him before, or never had anything to do with him except that I knew Mullen by sight.

Q. Were they there that morning?

A. Mullen and Bavier were both at the plant that morning, yes, sir.

Q. No. Were they at the gate with you?

A. I did not see Bavier at the gate, but Mullen was the night deputy whom I relieved when I came on.

Q. Did you see him at the gate?

A. See Mullen?

Q. Yes.

A. I seen Mullen at the gate when I relieved

him at about quarter of seven that morning.

Q. What gate did you see Mullen at?

A. The gate that we call the office gate.

Q. That is, the gate that the deputies went out of, is it?

A. That is the gate that I went out, yes, sir.

Q. Was it the gate the other deputies went out of?

A. I don't know. I can't answer that question.

Q. But you have agreed amongst yourselves to undertake to find out the truth and tell the truth?

A. We have agreed that to tell the truth is the best thing to do. That the truth cannot hurt us, and our counsel instructed us.

Q. Why did you enter into that agreement to tell the truth as the best thing you could do?

A. Why, so that no one might injure us with a lie.

Q. That is the reason you entered into that?

A. Yes, sir. We agreed that there was nothing to be afraid of, and for every man to tell the truth.

Q How long did you stand at that gate?

A. I relieved Mullen at quarter of seven.

Q. How long did you stand at that gate?

A. I am trying to answer that question, sir. I relieved Mullen at quarter of seven, and I stayed at that gate until probably five minutes after eight, about five minutes after eight.

Q. While you were standing at that gate how many people came there?

A. I don't understand the question.

Q. You don't understand the question?

A. No, sir.

Q. (Repeated by stenographer)?

A. I could not tell the exact number.

Q. About how many?

A. There was maybe six or eight people entered the plant.

Q. Who were they?

A. Some men whom I knew to be employed at the plant.

Q. Who?

A. Employes of the Williams & Clark plant.

Q. Name them?

A. I do not know their names. They are not connected with me in any way. I just knew that they were employes and admitted them through the gate.

Q. Were there any deputies who came there?

A. I cannot answer that question. I don't remember.

Q. Did you see any deputies?

A. I don't remember seeing any deputies come in from the outside, as though they had been away at night.

Q. Did you see any come from the plant outside, as if they had not been away that night?

A. There were one or two men who had gone out, yes, sir.

Q. Who were they?

A. Mullen was one. He went to the post on the outside.

Q. Who else?

A. That is all I can remember.

Q. Did you see Frank Rick there that morning?

A. Frank Rick was my companion on the office platform. He was there that morning.

Q. Was Wallace there that morning?

A. Wallace was around the office that morning; yes, sir.

Q. Was he out on the platform, is the question I am asking?

A. Oh, yes, he was on the platform off and on that morning.

Q. Was Bavier there?

A. I don't remember seeing Bavier there.

Q. Was Bedell there?

MR. McCARTER: One moment. I do not think he is one of the ten. I object. What is the use of asking questions s—

Q. Was Smith there?

MR. McCARTER: I object. Can we have an objection paid attention to by counsel?

THE COURT: Why is that competent. I overrule the question.

Q. Was Patterson there?

MR. McCARTER: I object. It has been ruled on.

THE COURT: I will admit that question.

MR. McCARTER: He is not one of the ten.

THE COURT: Well, I know, but I overruled it with reference to Mr. Smith, because I have indicated that I propose to instruct the jury that he should be acquitted, as there is no evidence against him.

MR. WESCOTT: Harry Patterson, the man who was in here who did not want to answer.

MR. McCARTER: Your Honor has already ruled on several occasions that the presence or absence of people who are not here is immaterial. You have ruled that several times. That is the reason Bedell was not permitted to be answered

a moment ago. He is not here, and he is under indictment. I do not see why exception should be made in the case of Mr. Patterson; he is under indictment. I think it is immaterial and obviously unfair. Your Honor has already ruled on it.

MR. WESCOTT: Here is a witness who has volunteered a declaration that the scheme between him and his fellow deputies was to ascertain and declare the truth. He has said that he did not recognize or remember, or at least—I won't say recognize, but remember anybody who was with him at that gate. Now, is it conceivable under those circumstances that I cannot test his veracity and his memory? I never heard of such a protest before.

THE COURT: What would be the advantage of it? Suppose he says yes, the man was there?

MR. WESCOTT: That then will show he is not telling the truth, won't it?

THE COURT: That evidence all is a matter of argument. I think we had better confine ourselves to trying these nine men.

MR. WESCOTT: I am not trying anybody else. I am just trying his veracity and his memory.

THE COURT: I overrule the question.

Q. Was John C. Moran there?

MR. STRICKER: We object.

THE COURT: State some reason.

MR. STRICKER: I withdraw the objection.

Q. (Repeated by the stenographer)?

A. Where?

Q. At the gate, place we are talking about when you were there?

A. I did not see Moran at the gate that morning.

Q. You saw him there?

A. I did not see him at the gate.

Q. Did you see him in that locality with you?

A. No, sir.

Q. Did you see him that morning at all?

A. I did.

Q. Where?

A. In the kitchen.

Q. Did you see him anywhere else?

A. I cannot remember seeing Moran except in the dining room that morning.

Q. Did you see John O'Mara there?

A. O'Mara was on the platform, yes, sir.

Q. Harry Tone?

A. No, sir, I did not see Tone.

Q. Did you see William McLaughlin?

A. I did not see McLaughlin that morning.

Q. No where at all?

A. I have no recollection of seeing McLaughlin that morning.

Q. Did you see John Smith there?

MR. McCARTER: I object. He is the man your Honor has already ruled on.

THE COURT: That I have already ruled on. That is the defendant here.

Q. Did you see Williams there?

A. I don't understand that question.

By THE COURT:

Q. Did you see Williams there?

A. Williams is the only man I know, is myself.

THE COURT: Then answer him.

A. I have told the Attorney General, your Honor, that I was there.

THE COURT: Just answer his questions. You sit there and don't answer them.

By MR. WESCOTT:

Q. When you left the gate now to go towards the depot, who went with you?

A. I went as far as the fence alone, to a point a little beyond the fence alone.

Q. When you traveled alone along the fence, did you get through traveling alone?

A. There were other men had come out, other deputies came out.

Q. Now, who were they?

A. I don't remember at this time who they were.

Q. Were any of these defendants here with you?

A. I don't remember any of those defendants being out there.

Q. But there were deputies with you?

A. There were deputies went out about the time I went out.

Q. In your conversations at the jail did you undertake to ascertain who went out there, in order that you could tell the truth?

MR. McCARTER: I object.

THE COURT: I will allow the question.

A. No, sir.

Q. How many of them were with you?

A. My recollection is that when I started out there was probably a half a dozen men.

Q. Now, just tell me who they were?

A. They were deputies.

Q. Just name them?

A. I have answered that question before that I don't remember who they were.

Q. Did you see them any time after that?

A. I don't remember who they were.

Q. Did you see them any time after that? This same morning, these same men?

A. I don't remember who they were.

Q. That is the truth?

A. That is the truth, yes, sir.

Q Well, after you got through at the depot and went back to the works, did anybody go with you besides Mr. Rosman?

A. Mr. Rosman did not come on that train and I did not go as far as the depot. I have never said that I went as far as the depot.

Q. Did you go from the depot back to the works?

A. I did not go as far as the depot.

Q. I know, but did you go from the depot back to the works?

A. I did not. I object to that question. I did not come back from the depot. I went back from this point that I reached. This point which I can locate on the map is the distance that I went.

Q. How far was that point from the depot?

A. I can locate the point on the map.

THE COURT: Answer the question.

A. I didn't know the exact number of feet.

Q. About how many?

A. My recollection is that it is about 75 feet from the depot.

Q. That was as close as you got to the depot?

A. That was as close as I got to the depot that morning.

Q. Then you did not undertake to remove the ties?

A. No, sir.

Q. Well, you got within 75 feet of the depot and that is as close as you got to it?

A. Yes, sir.

Q. Now we have got you located. When did you leave the 75 foot spot—when you left the 75 foot spot, did you go back to the works again?

A. After the train left the station—

THE COURT: Answer the question.

A. I returned—

THE COURT: Just listen to the question and answer it.

Q. (Repeated by the stenographer)?

A. I returned to the office.

Q. Did anybody return with you?

A. The deputies who had been outside returned to the office.

Q. Who were they?

A. I can't remember.

Q. How many of them were there?

A. My recollection is that when they got ready to return back to the office there was probably 35 men.

Q. 35 deputies?

A. 35 men whom I knew as deputies.

Q. Can't you name one of them?

A. No, I can't name one of them.

Q. How many deputies were there at the plant all together?

A. My notion at that time was there was about 45.

Q. They were all out then but ten?

A. About that number I have stated. About 35 men were outside.

Q. And they all went back again as you have stated?

A. As far as I know they all came in again, yes, sir.

Q. Did you hear of Wallace and Mullen getting hurt?

A. I did later in the day.

Q. What time of day did you hear it?

A. Around the noon hour.

Q. Have you heard of it since?

A. Oh, yes, I have heard of it since.

Q. Talked it oer a good deal in the jail haven't you?

A. We have talked about every point in this case that entered my mind. I often asked Mullen how his knee was getting along, and he told me that Dr. Carroll had treated it and the knee was all right.

Q. Didn't they tell you that they were outside and got hurt?

A. No, sir.

Q. They didn't?

A. No, sir.

Q. But you heard of their getting hurt how soon after this?

A. I heard of them getting hurt about noontime of that day.

Q. Had you curiosity enough to learn where they were when they got hurt?

A. No. I supposed from them being hurt that they had been in the riot, but I didn't ask them if they had been out.

Q. And they didn't tell you?

A. They didn't say they had been out, no, sir.

Q. And you didn't hear that until you got here in the jail and heard it talked over?

A. I knew at noontime of that day, when I went for my dinner, that Mullen had been knocked down and hurt with stones and that Wallace had been struck on the leg.

Q. Who told you?

A. The men around the cook house.

Q. As you were standing at that corner, or near the office, I don't know exactly where you were, you saw a crowd marching down the railroad, did you?

A. I as standing on the platform of the office.

Q. And you saw a crowd—

A. When the crowd marched down the railroad.

Q. Of about how many men?

A. I should judge four hundred.

Q. And you say three quarters of that crowd about, in your judgment, had baseball bats, pieces of iron, and what else?

A. I answered your question when I stated that in my judgment three quarters of that crowd had clubs in their hands.

Q. Didn't you say pieces of iron?

A. Yes, sir.

Q. You were standing at that time on the platform?

A. On the office platform.

Q. The office platform?

A. Yes, sir.

Q. And they were over on the railroad track marching toward the depot?

A. They were on the railroad track marching towards the depot.

Q. In what sort of formation were they march, these three or four hundred men?

A. The front part of the mob was packed very densely, and the rear spread out, straggled more.

Q. About how many abreast?

A. Oh, just a mob. Just nobody abreast, but just all in a bunch. A big mob in front.

Q. Did they occupy the width of the railroad track?

A They covered the space between the track and the sides of it. They followed the track down.

Q. And what did the people have in their hands who were on the far side of the track from you?

A. I don't understand what you mean by the far side of the track.

Q. Well, there was a near side and a far side, wasn't there?

A. There was a railroad track, the main track, known as the Sound Branch which they were coming down.

Q. When you stood on that platform and looked over towards that railroad there was a crowd going parallel, substantially, with you?

A. They were passing the point at which I stood on the office platform.

Q. What did the people who were on the far side of the crowd have in their hands?

A. I don't understand the question. These men were marching down the railroad.

Q. It took several men to fill up the railroad tracks, didn't it?

A. Yes, it takes lots of men to fill them up.

Q. And the crowd was about how long?

A. My best judgment on that is that it was about from the beginning of this mob to the rear where they straggled out, was about 100 yards as they marched down.

Q. There was a crowd 100 yards long about,

marching between the rails, as I understand you?

A. Yes, sir.

Q. Or at least on the—

A. On the railroad.

Q. On the bed of the railroad?

A. Yes, sir.

Q. What did the people have in their hands that were on the far side of that crowd?

A. Three quarters of this crowd had sticks and clubs in their hands.

Q. How much of the three quarters of the crowd were on the far side?

A. They were on the railroad.

Q. All on the railroad?

A. Yes, sir.

Q. What kind of iron did they have in their hand?

A. Why, my opinion is that there was—

Q. No, don't give us your opinion. Give us what you saw?

A. I saw iron piping in their hands.

Q. How many iron pipes did you see?

A. Probably five or six that I knew to be pipe.

Q. Did you see any other kind of iron in their hands?

A. I seen thin rods that looked to be solid rods with bolts on them, nuts.

Q. How many?

A. Oh, a few. Enough to notice that they were there.

Q. How many baseball bats did you see?

A. Why, I don't know that I remember now more than one baseball bat.

Q. What other kinds of weapons did you see in their hands?

A. Rough sticks.

Q. Rough sticks about how big?

A. Various lengths.

Q. Well, give us an idea of the various lengths?

A. Why, the shortest I seen was about as long as a policeman's stick, and some had sticks four and five feet long.

Q. And you saw all that when you were standing on the platform?

A. As the crowd marched down toward the station, yes, sir.

Q. You didn't get over to the depot at all, as I understand you?

A. No, sir.

Q. Not even to escort Mr. Rosman?

A. Mr. Rosman did not come on the train that morning.

Q. I understood you to say the riot started and you waited to help Rosman.

A. I wanted to escort Mr. Rosman from the train to the office.

Q. Was there anybody else on the train that you wanted to help?

A. As a usual thing about three or four other men besides Mr. Rosman use that eight o'clock train to come to the plant.

Q. What did Eddie Conlan say to you?

A. When Conlan arrived at the plant that morning he asked me if I had chased the Hunkies.

Q. Asked you what?

A. He asked me if I had chased the Hunkies.

Q. Chased the Honeys?

A. Chased the Hunkies. And I told him I had been out to meet Mr. Rosman, but that Rosman had not come on that train. And he told me that he seen the mob coming down towards the plant, and that he kept good care to stay away until after train time, when the mob had gone back.

Q. Did he tell you where he stayed?

A. I should judge he stayed in Carteret.

THE COURT: That is no answer to the question.

Q. (Repeated by stenographer)?

A. He told me he stayed in town, stayed uptown.

Q. And he told you that he did not leave the town at all until after the whole thing was over?

A. That is the talk we had, that he stayed uptown until the mob started back after the eight o'clock train had gone.

Q. You had no difficulty in recognizing Conlan, did you?

A. I knew Conlan very well.

Q. Better than you did your fellow deputies?

A. Yes, sir.

Q. Is that the reason you could recognize him so much more easily than you could your deputies?

A. Conlan was the office boy at the plant.

Q. And he knew your deputies?

MR. McCARTER: Let him finish the answer.

A. Conlan was the office boy at the plant, and almost every day, when he went to town on errands, he would bring me cigars, or any little thing I wanted. Cigars mostly. Something to smoke.

Q. Brought you mail sometimes, didn't he?

A. I don't remember receiving any mail at the plant.

Q. Conlan saw all of you deputies there, didn't he?

MR. McCARTER: I object.

MR. WESCOTT: All right. Your objection may be valid.

Q. When you entered into bail here what did you give as your residence, what place?

A. I have forgotten the number of the street. Somewhere on Plane Street, Newark.

Q. Was it 199 Plane Street, Newark?

A. I believe that is correct, sir.

Q. Who lives there?

A. I don't know.

Q. You also made a statement, didn't you?

MR. McCARTER: At the time he gave bail?

THE COURT: Answer the question. You were asked did you make a statement.

A. I did make a statement.

Q. Look at that and see if that is your signature (handing paper to witness?

A. Pardon me, I just want to know if the question was, did I make this statement—

THE COURT: Never mind. You have answered it. Now look at that paper and answer the question.

MR. McCARTER: With two people telling him to do different things he has got to take some time. Your Honor told him to do one thing and the Attorney General told him to do another.

THE COURT: He is asked if that is his signature. Let him answer that.

A. That is my signature.

Q. Where were you when you made that signature?

A. In the office of Williams & Clark's plant.

Q. When?

A. On the 19th of January.

Q. What time on the 19th of January?

A. My recollection is that it was midday, some time near midday.

Q. Who was present?

A. The statement was made to the gentleman at your side, Mr. Coan, I believe.

Q. Let me read it to you: "James D. Williams, 546 West Broadway, New York, says, I am employed by the O'Brien Agency. I was at the Williams & Clark plant on Tuesday, January 19th, 1915. I came on duty this A. M. about 6:00 A. M. About 7:50 I was on the front platform in front of the office. Patterson was in charge, and a number of other deputies Wallace was there, Frank Rick, some others whose names I can't recall. I saw a number of men, in my judgment three or four hundred, marching up the Branch Road, the railroad coming from the town toward the station. The majority formed around the railroad station. Many spread along the track and others formed in a mob beyond the station toward Elizabethport. They began piling steel rails and ties across the track at a point one hundred feet beyond the station towards Elizabethport. One man drove a stick in the ground and hung a red sweater on it at the point where the piling was being done. I could see this from the office platform. A train came along and stopped a few feet beyond the obstruction. A few men were called off to meet the train. They went out. There were six or seven went out first. Others followed. I don't know how many. I was in the first six or seven. Others were Wallace and Patterson. Don't recall the others at present. I had known them only since I have been here. As we were a little distance from the picket fence, and between the fence and the station, a number of shots were fired, seems to me from the station.

Others came from up the track nearer to the town. Don't know how many were fired. 15 or 20 sticks and stones thrown. None of us hit that I know of. Wallace was hit on the foot with a stone, not bady hurt. I know of no one else. The crowd dispersed after a time and walked up towards town, and we came back to the office. On our way back a town officer and a man in plain clothes came up and talked to us abusively. I saw some shots fired in the air by the deputies. I saw only one that I know of fired in the air nearby. I don't know what deputy that was. I know of no other shots fired by the deputies. I saw one man in the water as though he tripped. There was a pool of water between the tracks, at the junction near the station. He ran through this, fell, and picked himself up. Some of the deputies had eight sticks, three or four guns were all I saw. By guns I mean pump guns. A pump gun is a magazine shotgun. They shoot shells. There were some revolvers in the crowd, but I saw none in the crowd this A. M. The shot I saw fired in the air was from a pump gun. When the train came to a stop, two trainmen in blue uniform got off and helped remove the obstructions. Also the men in the crowd, I don't know if strikers, onlookers or deputies. When the obstructions were removed I was a few feet beyond the picket fence. That was as far as I got. Some deputies went to the train. Shortly after I was told to go in the office." Is that correct?

A. It is not altogether correct.

Q. Did you make that statement to Mr. Coan?

A. I made a statement to Mr. Coan.

Q. But not that one?

A. I signed this stateemnt, but it is not altogether correct.

Q. Did Mr. Coan read it to you before you signed it?

A. No, sir.

Q. Did not?

A. No, sir.

MR. WESCOTT: That is all. I ask to have that marked.

RE-DIRECT EXAMINATION:

By MR. STRICKER:

Q. What is there wrong about this statement, Mr. Williams?

A. The first part says, "I am employed by the O'Brien Agency." Now, as I remember it, Mr. Coan asked me, whom are you working for, and I answered the Sheriff. I did not say I was working for the O'Brien Agency.

Q. All right. Now what else?

A. I said, "I was in the first six or seven. Others were Wallace and Patterson. Don't recall the others at present." Now, I was asked who was on the platform and around the office, and I remembered Wallace and Patterson as being around the office that morning. I did not say that Wallace or Patterson went outside.

MR. STRICKER: That is all.

RE-CROSS EXAMINATION:

By MR. WESCOTT:

Q. How did you know O'Brien wanted men?
A. I was telephoned to by a friend of mine in New York.
Q. Who?
A. James Bavier telephoned to me at the Lafayette Hotel, 546 West Broadway.

MR. WESCOTT: That is all.

MR. STRICKER: That is all.

MR. WESCOTT: We offer that statement in evidence.

(Statement entered in evidence and marked Exhibit P-7.)

HARRY TOME, a witness produced on behalf of the defendants, being duly sworn according to law, on oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Tome, where do you live?
A. 74 Wickliff Street, Newark, New Jersey.
Q. How long have you lived there?
A. Lived there about three years.
Q. Are you married?
A. Yes, sir.
Q. Family?
A. Yes, sir.
Q. What is your occupation or business?
A. I have been working at the Edison Phonograph Works for the last five years.
Q. In the month of January of this year were you employed by the O'Brien Agency?
A. Yes, sir.
Q. And as a result of that employment, did you go to Roosevelt?
A. I did.
Q. Were you sworn in by the sheriff of this county as a deputy?
A. I was.
Q. And after being so sworn did you enter upon your duties?
A. Yes, sir.
Q. Directing your attention to the morning of January 19th, where were you?
A. I was in front of the Williams & Clark plant, facing the railroad on night duty.
Q. And before that time had you received any word regarding a demonstration which took place at the Liebig plant?

A. Yes, sir.

Q. Did you have an opportunity to observe the railroad station?

A. From where I was, yes, sir.

Q. What, if anything, did you see there?

A. At what time?

Q. Around eight o'clock.

Q. Eight o'clock?

Q. Yes.

A. After I had my breakfast I went down to the office and wanted to retire. I went upstairs and came down about ten—I was called about ten minutes to eight. There was a crowd of men, they said, coming up the track.

Q. Just tell us what you saw?

A. Saw a crowd of men coming down the railroad.

Q. How many men were there in the crowd?

A. About 400.

Q. Will you kindly describe that crowd?

A. Well, they looked like a bunch of foreigners with clubs.

Q. Anything else?

A. Iron, iron bolts, they all had something in their hands. I saw one man had a gun, and he shot in the air as he passed by opposite the office.

Q. On the track?

A. Yes, on the track.

Q. What do you mean by a gun?

A. A revolver up in the air.

Q. Now, did you hear anything during that night at the Williams & Clark plant, while you were on duty?

A. Yes, sir.

Q. What?

A. About one o'clock, around about one o'clock when I was down after lunch, I heard five shots.

I was detailed between the bag house and the dining room.

Q. When you say one o'clock you mean midnight?

A. Yes, sir.

Q. Midnight lunch?

A. Yes, sir, midnight lunch. Around five shots. I was posted right opposite where the railroad runs along the fence, right there.

Q. Yes.

A. There is two tracks, one the main line and one side track. They had a lot of oil cars or cars with tanks on, and there was five shots fired from that track where I stood. I was on both with Dr. McLaughlin here. He joined my post and we stood there and those shots came right straight across. I heard the bullets pass me, or one of them.

Q. Now, directing your attention now to eight o'clock or about that time after you saw this group of men with clubs leave the—this crowd of men with clubs I think you said?

A. Yes, sir.

Q. Did you see them with anything else?

A. Well, they had iron bolts and that stuff such as that.

Q. And did you observe anything on the track?

A. They were getting ready to put stuff—

Q. No. Did you see anything on the track?

A. They were putting stuff on the track, yes, sir.

Q. What kind of stuff were they putting on the track?

A. They were gathered right in a bunch near the depot.

Q. What did they put on the track?

A. Logs.

Q. Logs?
A. Yes, sir.
Q. Did you notice a pole with a red sweater?
A. Yes, sir, and a steel rail, across it.
Q. Did you see the train come in?
A. About five minutes past the train came in.
Q. And before or at the time when the train came in did you see the crowd?
A. Yes, sir.
Q. And did you see any of the crowd do anything and if so, what?
A. They were putting their clubs up in the air and hollering and using all kinds of language.
Q. Did you see any shooting from that crowd?
A. Sir?
Q. Did you see any shooting from that crowd?
A. Yes, sir. I did.
Q. And did you see any of that crowd throw anything?
A. Yes, sir.
Q. And if so, what?
A. They threw everything they had in their hands. Rocks, stones and brickbats.
Q. Did you hear any shouting or hollering?
A. Yes, sir.
Q. Could you distinguish what it was or what was hollered?
A. Yes, sir.
Q. What?
A. Not very nice to say.
Q. What?
A. Well, they said, "Kill the cocksuckers. Drive them in the river."
Q. Yes, and anything else?
A. Son of a bitch, and such stuff as that.
Q. And how many shots did you hear or see fired in the direction of these strikers?

A. Oh, I should judge about twenty or more.

Q. Well, what did you see, what did you do?

A. Well, at that time I went down there; at that time with my gun.

Q. You went down there to the station?

A. Yes, sir, with a crowd of other men, to meet the train.

Q. Did anybody tell you to go there or did you go of your own volition?

A. I went of my own accord.

Q. After you got to the station did you shoot your gun?

A. I did.

Q. Did you fire your gun at anybody?

A. I fired in the air.

Q. How many times?

A. Two shots.

Q. Now, during all that time, you were out there, did you aim your gun at anybody?

A. I did not, no, sir.

Q. Did you shoot at anybody?

A. No, sir.

A No, sir.

Q Was anybody—did anybody direct you to shoot at anybody?

A. No, sir.

Q. Did you leave that office on that morning with an agreement with anybody to do any shooting?

A. No, sir.

Q. And is that the same gun you had on post all night?

A. That night, yes, sir; it was given to me after that shooting occurred.

Q. What shooting?

A. The shooting of the five shots, or at least that morning.

MR. McCARTER: One o'clock?

A. One o'clock, yes, sir.

Q. Was there any guard or protection on that platform during the night of the 19th?

A. On which platform?

Q. On the office platform.

A. Any guards?

Q. Any protection, any shield?

A. Not that I know of.

Q. Well, on the platform on your post?

A. No, the only thing I had I had some bags there to keep from getting shot, piled up there on the corner of the platform.

Q. Now at the time that you discharged that shot gun into the air, what was going on?

A. Why, when I discharged my gun in the air, they were shooting.

Q. Who were shooting?

A. The strikers. The people doing the rioting.

Q. Were they throwing anything at that time?

A. Yes, sir. And I saw a big piece of iron I guess about 5 inches long, which the top of my head.

Q. Did it hit you?

A. It didn't hit me. And I saw one man who was—I couldn't exactly say—about ten or fifteen feet away from the tool house, I seen him shoot, turn around and run, shoot and turn around and run again.

Q. Show us what you denominate as the tool house?

A. This here.

Q. Was that man a striker?

A. Yes, sir, he was a dark complected man, looked like a Hungarian or an Italian.

Q. Now during the time that you were at the

Williams & Clark plant, did you notice whether any one of the deputies had a red sweater?

A. Never; I never seen anybody have a red sweater in the place.

Q. Did you wear one?

A. No, sir.

Q. After the shooting took place were you interviewed by anybody in the prosecutor's office?

A. No, sir.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. How old did you say you were?
A. I am 47 years old.
Q. Where were you born?
A. I was born Drakesville, New Jersey.
Q. Where?
A. Drakesville, New Jersey, between Drakesville and Kentville, the country above Dover.
Q. Have you a trade?
A. Yes, I have a trade I follow.
Q. What?
A. I have a couple of trades, I generally follow.
Q. What?
A. Steam fitting, machine work, assembling work and that line. I worked in the Edison Plant for five years, the last work I have been doing.
Q. Where did you spend your life?
A. Mostly in Newark, New Jersey.
Q. Where did you live in Newark?
A. All over the City of Newark pretty much.
Q. How many years have you lived in Newark?
A. I guess I have lived there 35 years.
Q. What do you do?
A. What is that?
Q. What do you do?
A. I have worked at all classes of work.
Q. Follow your trade?
A. When I went to Newark, New Jersey, I learned the barber trade.
Q. Then you have three trades?
A. Yes, sir, but a man can't pick anything he

wants. He has to take whatever he can get, sometimes, dull times.

Q. Did you work at either of these three trades?

A. I haven't served no time at any of them. I just simply worked at them.

Q. You worked at them?

A. Yes, sir.

Q. Where, in Newark?

A. Yes, sir.

Q. Where else have you lived outside of Newark?

A. Where else have I lived?

Q. Yes.

A. Up in Dover, I was there when I was a boy.

Q. No where else?

A. No, sir.

Q. Travel any?

A. Not much.

Q. Ever had anything to do with strikers?

A. Only by Jerry O'Brien, that is all.

Q. What?

A. Jerry O'Brien's Agency.

Q. When did he first engage you?

A. Well, that was at the last strike, that it was; at the Liebig Plant; that is about two years. It will be two years this summer.

Q. That was your first experience?

A. Once before.

Q. Where?

A. At the Oranges.

Q. Where?

A. At the Oranges.

Q. At the Oranges?

A. Yes, sir.

Q. What strike was that?

A. The hatters strike.

Q. The hatters strike?
A. Yes, sir.
Q. Where else were you engaged?
A. No where else that I know of.
Q. How did you happen to get into this?
A. By knowing them.
Q. By knowing who, O'Brien?
A. Yes, sir.
Q. Couldn't you get employment at any of your own trades?
A. Sometimes you can and sometimes you can't.
Q. I said, couldn't you at that time?
A. If I could, I wouldn't have taken—
Q. How long had you been idle?
A. Sometimes two or three weeks. Sometimes for a month.
Q. How long had you been idle just prior to the O'Brien engagement?
A. Sixteen weeks, the time the war broke out. They laid off about fifteen hundred hands at the Edison Works.
Q. And then you applied to O'Brien?
A. Yes, sir; finally applied to O'Brien, when I heard of this work.
Q. You were down there by the gate, as I recall?
A. Yes, sir.
Q. Who was with you?
A. Well, that I don't know.
Q. What?
A. I don't know. There was a crowd of people there; I don't know who they were. I was not acquainted.
Q. At the gate?
A. At the gate. You mean on the platform?
Q. Yes.

A. I don't know; I am not acquainted with those people that worked there.

Q. Don't you know any of the deputies?

A. I only know one and that was Dr. McLaughlin who joined my post. I never made any acquaintances with the others. I was on night duty.

Q. Never met any of the rest of them?

A. Never made any acquaintance with them.

Q. Was McLaughlin there?

A. I don't know that morning; we left our work that morning and went to breakfast. From that I went to the office.

Q. Don't you know any of the deputies when you see them?

A. I couldn't say they were deputies.

Q. Were there any in there that you knew?

A. Yes, I suppose there were deputies.

Q. How many did you recognize of these deputies?

A. They were all gathered together there, I couldn't say. There was a pile on that platform.

Q. Deputies?

A. Yes, sir.

Q. And out of the number there was none that you recognized at all?

A. No, none that I know. I wouldn't know them if I seen them. I got acquainted with them since I have been in jail.

Q. You recognize them now?

A. Yes, I know them now, some of them, but I wouldn't know them then.

Q. You had been engaged there on the 5th of January?

A. Yes, sir, 5th of January.

Q. In that plant?

A. Yes, sir.

Q. As a deputy?
A. Yes, sir.
Q. With other men?
A. With other deputies.
Q. Did you get instructions about your duties?
A. My instructions were to look after that post where I was on.
Q. What post was that?
A. That was the front of the bag house between the bag house and the dining room building, what I call the dining room building, what I call the dining room building along the fence.
Q. How large a territory did that beat cover?
A. I don't know, about 150 feet I guess, or so.
Q. You never got out of that?
A. I kept tabs on the whole fence, all the way along; that is kept my eyes on it so as to see nobody was getting over it.
Q. 150 feet?
A. I should judge about that; I controlled about that anyway.
Q. Who was the deputy next to you?
A. Dr. McLaughlin; and on the other way there was none.
Q. Who?
A. Dr. McLaughlin was the adjoining post to me on this side.
Q. And on the other side?
A. There was none. That went towards the office. I could see clear to the office.
Q. Who was the deputy back of you?
A. I don't know, I don't know.
Q. Did you go over to the depot?
A. Yes, sir, I did.
Q. Who went with you?
A. Who went with me, I don't know. They were all trailing along behind one another, I don't

know who they were, how many of them. I should judge about the first lot that went out was about ten of them, and the rest followed close behind, I didn't look.

Q. Didn't see him?

A. I saw them coming, but I paid no attention to them.

Q. Paid no attention to the deputies going out with you?

A. No, sir, paid attention to myself.

Q. Why didn't you pay attention to those going out with you?

A. Why should I.

Q. I am asking why you didn't?

A. I don't know why I didn't.

Q. Did you regard that you needed your attention for yourself?

A. A man had all he could do to look after himself.

Q. A pretty strenuous situation?

A. Yes, sir, it is.

Q. Every man had to look out for his own life and limb?

A. For number one.

Q. Else he would be killed?

A. Liable to be.

Q. You had a pretty close shave when that piece of iron went by you?

A. As close as I want, I don't want any closer.

Q. How big was it?

A. About five inches in diameter.

Q. About five inches in diameter?

A. Or five inches wide, five inches square.

Q. What kind of a piece of iron was it?

A. About half an inch thick, I should judge.

Q. Where did it come from?

A. From the strikers.

Q. How far away were the strikers from you?
A. They were all around me.
Q. You were surrounded then?
A. I was pretty nearly surrounded, yes, sir.
Q. And how close were you to the striker when this piece of iron flew past you?
A. I don't know from the one that threw it at me. I don't know, they were all around me, and they were throwing stones, and I was dodging in every direction.
Q. What was that?
A. I saw the stones coming in every direction.
Q. It kept you ducking and dodging pretty rapidly?
A. Yes, sir.
Q. How long did they keep you ducking and dodging very rapidly?
A. I don't know the space of time?
Q. About how long?
A. A couple of minutes.
Q. Did they keep you ducking and dodging a couple of minutes?
A. Yes, sir, pretty much.
Q. You had pretty good exercise for a couple of minutes?
A. Yes, sir.
Q. What was it you were dodging, mostly iron?
A. Only one piece of iron I saw. I saw everything, cinders, stone and brick.
Q. How big was the brick they picked up?
A. I don't know, about the size of a half a brick.
Q. And between the tracks and the steps they were flying around you?
A. Yes, sir.
Q. What else did you dodge?
A. Pieces of cinder and such stuff.

Q. Pieces of cinder and what else?
A. Sticks.
Q. Sticks?
A. Yes, and clubs.
Q. And clubs; and what did the sticks and clubs look like.
A. I seen some men have pick handles and some with long pieces of wood.
Q I refer to those you dodged?
A. They were pieces of wood. I don't know, I don't remember.
Q. You did pay some attention to them?
A. No, not to what they looked like.
Q. Not to what they looked like?
A. No, sir.
Q. Did this fussillade keep up for the whole two minutes?
A. I don't know, I couldn't say that.
Q. You have said it was about two minutes?
A. Well, I should judge it was around there about two minutes, but I was not in any one spot. I came towards the train.
Q. Were there any deputies with you?
A. There was deputies all in amongst them there.
Q. What?
A. There was deputies in amongst them there all around.
Q. I suppose the rest of the deputies were ducking and dodging?
A. They had the same trouble.
Q. They had the same trouble.
A. I presume so.
Q. Well, when you saw this crowd coming down the railroad as I understand, they all had something in their hands?
A. All had something mostly.

Q. Mostly?

A. I couldn't say every man had something; I saw that most of them had something.

Q. What did they have then?

A. Sticks and such stuff, pieces of iron looked like short bolts, long pieces of iron, round iron.

Q. And you were over at the platform when you observed that?

A. Yes, sir.

Q. Did you have a revolver at that time?

A. No, sir, never had one.

Q. Did you have a gun?

A. I had a pump gun.

Q. You had a pump gun. Did you have it with you?

A. Yes, sir.

A. Yes, sir.

Q. What does that pump gun shoot?

A. Small shot, I believe, as I understand.

Q. Small buckshot?

A. Small buckshot, I believe.

Q. About how many shells, forty or fifty?

A. Oh, no, I shouldn't think so.

Q. What?

A. I don't know, I haven't seen the inside of them, I couldn't tell you that.

Q. Two shells certainly contain as many as forty or fifty buck shot?

A. I couldn't say. I don't know what they have inside of them. I never opened one of them.

Q. You fired that up in the air?

A. Yes, sir.

Q. When you fired, did you see anybody's leg in front of you?

A. No sir, they couldn't be up in the air with their leg.

Q. I know, but somebody may have been leap-

ing up in the air as a bird flies. What way did you point your shot gun?

A. Up in the air.

Q. What part of the heavens did you point at?

A. In the direction over the depot. About that anyway, right over the depot from where I stood.

Q. Why did you point it that way?

A. I don't know that it made much difference. There wasn't nobody in that direction I could see.

Q. While you were ducking and dodging these innumerable missiles, they were firing at you, how did you get a chance to fire your shot gun. Didn't you wait until it was all over?

A. I waited until it was all over.

Y. You waited until it was all over?

A. No, sir, I didn't.

Q. When did you fire?

A. I fired while these shots were going on.

Q. I am talking about the shots that were fired at you.

A. Yes, sir, that is the time I fired.

Q. That is the time you fired?

A. Yes, sir.

Q. While they were firing missles at you?

A. Not missiles, when they weer shooting their revolvers.

Q. After that piece of iron that whizzed past your head?

Q. Did you shoot while that was whizzing by you or just before?

A. Just before.

Q. Just before, just when the revolvers were shooting?

A. Yes.

Q. Were you dodging and ducking at the time you put your gun up in the air and pulled the trigger?

A. I wasn't dodging anything at that time. They were throwing, but I didn't have to dodge anything. At the time they were shooting the revolvers I didn't get close enough for them to hit me with the stone.

Q. Of course you don't understand what this mob said altogether because some of them spoke Italian?

A. Yes, sir, I couldn't understand that, but I understood the English.

Q. They yelled what you have repeated here?

A. Yes, sir.

Q. I understand theer were some bullets passed by you on one occasion?

A. That was in the morning, early in the morning, right after lunch when those five shots were fired in the building.

Q. Where were you then?

A. I was at my post.

Q. What post?

A. Where the dining room is there.

Q What?

A. Alongside the fence.

Q. Alongside the fence?

A. Between the bag house and the dining room right along the fence.

Q. Did these bullets come through the fence?

A. They came over the top of the fence I should judge from the way these cars were. They are up high. I seen the flashes of gun, the flash of it.

Q. You saw five flashes of the gun?

A. I saw five flashes, yes, sir I was facing them when it happened.

Q. And then you heard the bullets?

A. And then I heard the bullets, yes, sir. I heard one.

Q. How close were you to the bullets when it whizzed by?

A. I couldn't say. I know I heard it.

Q. Immediately after that experience, you took occasion to fortify?

A. Yes, after that the rest of the night.

Q. What did you fortify?

A. Took a lot of bags from alongside the building there, which were inside the building and put them on the platform. Right at the end of the platform.

Q. Bags of what?

J. Just bags. They were all piled up.

Q. When did you do that?

A. Right after that on that night.

Q After you heard the bullets whizzing?

A. Yes, sir, that night.

Q. And immediately you went and hunted up the bags?

A. They were right there, I didn't have to hunt them up.

Q. On the platform?

A. Near the door right by the end of the platform. They were baled up there and I pulled them out.

Q. You just removed them from one part of the platform to the other?

A. They were inside of the building; the entrance door is on the platform there and I went in and got them and rolled them out to the end of the platform.

Q. How many?

A. I couldn't say. I think about three bales piled high.

Q. How big a breast works was that?
A. Like a breast works, yes, sir.
Q. How big when you got finished?
A. I should judge up to here, on me (indicating chest.)
Q. Could you safely look over the top of that?
A. Yes, sir.
Q. While you protected your body?
A. Yes, sir.
Q. How wide was that, this wide?
A. The length of a bag, I couldn't exactly say the length of that.
Q. About this?
Q. Wasn't it a breastworks about that high?
A. Yes, sir.
Q. Came up to your chin?
A. Chest.
Q. You got behind that to protect yourself?
A. I was behind that the rest of the evening.
Q. Yes?
A. Yes, sir.
Q. How long did you stay behind that breastwork?
A. I stayed there I guess until very near daylight.
Q. That is how many hours?
A. I couldn't say exactly.
Q. About how many hours?
A. Well, there was two or three hours I guess, or three or four hours, I couldn't say exactly.
Q. For three or four hours you stayed in a space that wide?
A. Yes, sir; I was there.
Q. Behind these bags and looked over them? Looked over the top?
A. Yes, sir.

Q. Could you see anything when you looked over the top?

A. Could I? Yes, sir; I can see a car over at that fence.

Q. In the dark?

A. There was an electric light out there; you could always pick out an object of any kind.

Q. Behind this breastwork?

A. Yes, sir.

Q. Did you hear any more bullets whistle past you?

A. No, sir; not any more that night.

Q. What?

A. No, sir; not any more that night.

Q. Where did you get that pump gun?

A. Got it out of the officer.

Q. Who gave it to you?

A. It was given to me by my chief.

Q. Who?

A. Mr. Patterson.

Q. When did he give it to you?

A. That night or that morning at least.

Q. What time that morning?

A. Why, it was right after the shooting. I went over there and got it.

Q. Right after what shooting?

A. The shooting of those five shots.

Q. That was right after midnight?

A. Yes, sir; right after midnight.

Q. Where was Patterson then?

A. He was in the office.

Q. Did you go to him and tell him about the shooting?

A. Everybody knew about that. They heard it.

Q. All the deputies heard that?

A. Everybody around that section there; yes, sir; as far as I know.

Q. And you went to Patterson and he armed you then?

A. Yes, sir.

Q. With this pump gun?

A. Yes, sir.

Q. And I suppose you kept that pump gun after that time?

A. Kept the pump gun the next day; yes, sir.

Q. You had a revolver?

A. No, sir.

Q. Never?

A. Never had a revolver.

Q. And how many other pump guns did you see there?

A. I should judge there was about six there.

Q. Who had them.

A. I couldn't tell you, I don't know. I didn't know the men; no, sir.

Q. Were they deputies?

A. I never made any acquaintances with the men in that plant. I kept by myself. I was on night duty.

Q. Were they deputies?

A. I presume they were as far as I know.

MR. WESCOTT: That is all.

MR. STRICKER: That is all.

FRANK J. RICK, a witness produced on behalf of the defendants, being duly sworn according to law, upon oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Rick, where do you live?
A. At the present time in the county jail.
Q. Where did you live in January of this year?
A. January of this year?
Q. Yes?
A. 207 West 14th street.
Q. New York City?
A. Yes, sir.
Q. Were you employed by the O'Brien Detective Agency to come to Roosevelt?
A. Yes, sir.
Q. Did you come to Roosevelt?
A. Yes, sir.
Q. And were you there sworn by the sheriff of this county as a special deputy or deputy?
A. Yes, sir.
Q. Were you asked where your residence was?
A. Yes, sir.
Q. Why did you lie about it?
A. I was out of work and to get the position here, the only reason I can give.
A JUROR: What?
A. I was out of work at the time and needed a position and to get the position I done it.
Q. Have you a trade or occupation?
A. No, sir; I have no trade.
Q. Where did you work last?
A. Last before this?
A. I was in Michigan.
Q. And working as what?

A. As a deputy.

Q. And before you went to Michigan where did you work at any job at anything?

A. I was wrapping and checking on bank notes for the American Reserve Bank.

Q. Where?

A. On West Downs street, West Side Printing Company.

Q. How long were you there?

A. I was only there on a rush job. It lasted two weeks.

Q. Before that where were you?

A. Out on different strike jobs.

Q. On different strike jobs?

A. Yes, sir.

Q. How old are you?

A. I am 31.

Q. Where was your first strike job you worked at?

A. 1910.

Q. And prior to 1910, where did you work?

A. On different jobs of the same kind.

Q. Strike jobs?

A. Before 1910, do you mean?

Q. Yes.

A. I was a teamster.

Q. Where?

A. Pittsburg, Pa.

Q. How long were you a teamster at Pittsburg, Pa.?

A. Seven or eight years or more.

Q. How old did you say you were?

A. Thirty-one.

Q. And you had been employed at anything before you were a teamster in Pittsburg?

A. Employed at anything?

Q. Yes. Was that your first job?

A. No, sir.
Q. What was your first line of business?
A. In the same line of business.
Q. Where?
A. The Eclipse Laundry Company.
Q. Where?
A. Pittsburg, Pa.
Q. Where were you born?
A. Evansville, Indiana.
Q. How long did you live in Evansville, Indiana?
A. I was taken away from there when I was a boy, a small boy.
Q. How old were you when you left Evansville?
A. I shouldn't say more than two years old.
Q. And you went from Evansville where?
A. To Pittsburg.
Q. And you lived in Pittsburg until you were how old?
A. I was there about eighteen or twenty years I should say.
Q. Now, directing your attention to the morning of January 19th, where were you?
A. On the platform of the office.
Q. Which office?
A. The Williams & Clark office.
Q. And how long had you been at that office —I mean how many days?
A. From the 6th of January.

JUROR No. 2: Face this way.

A. From the 6th of January.

MR. STRICKER: Kindly face the jury.

A. Yes, sir.
Q. Directing your attention now to the morn-

ing of the 19th, as I have, you state you were at the office?

A. Yes, sir.

Q. Tell this court and jury how long you had been at this office?

A. I was on duty at the office from the 6th of January until I arrived at this jail.

Q. No, I mean on that particular morning, how long were you on duty at this office?

A. About from a quarter to seven.

Q. About from a quarter to seven?

A. Yes, sir.

Q. Did you go on duty then?

A. Yes, about a quarter to seven.

Q. Did you have a view of the Williams & Clark station? And the grounds surrounding it?

A. Yes, sir.

Q. State whether or not it was some time on that morning you had received information of an alleged demonstration which had taken place at the Liebig plant?

A. I heard some talk of it; yes, sir.

Q. Did you see the eight o'clock train come in that morning?

A. Yes, sir.

Q. And before that train came in, did you see anybody around the Williams & Clark station?

A. Yes, sir.

Q. What did you see?

A. Well, at first I seen I may say two or three hundred men or more come down the track, passenger track, from the direction of Carteret towards the station.

Q. And did they have anything in their hands?

A. Yes, some had.

Q. What did they have.

A. Sticks and clubs and iron bars as plain as I could make out.

Q. Did you see any obstruction on the railway?

A. Yes, sir.

Q. Anybody place it on the railway?

A. No, sir; I didn't see it placed on the railway and I hadn't seen it until I left the entrance.

Q. Did you see a pole with a red sweater hung on it on the track?

A. I seen an iron rail which seemed to be curved, sort of a railroad track.

Q. Yes.

A. And from where I was, it looked as though it was anyway. And what seemed to me was a red flag or something of that sort connected to a stick which was stuck in the ground.

Q. What was this crowd doing at the time when you first saw it?

A. They were marching down this track towards the station, making motions with their arms, which meant threats towards us as they went in our direction; to the platform. They were talking and speaking in their own nationality, but I don't know that that was English, otherwise I would have understood what they said. It seemed to be foreign languages. And they were making so and so motions, and one in particular I heard swearing, and that was in English.

Q. Were there any shots fired by that crowd, and if so at what time?

A. I didn't hear any while I was on the platform.

Q. Did you hear any afterwards?

A. Yes, sir; while on the railroad track, the freight track or by the freight track.

Q. Will you kindly go over to that map and show us what you mean by the railroad track?

A. Yes, sir. (Witness indicates.) About right in here.

THE COURT: Point it out on this map. Can you point it out to me.

A. This track about in here, the freight track.

Q. Well now, what—strike that out—did you leave the platform that morning?

A. Yes, sir.

Q. Anybody request you to leave the platform?

A. No, sir.

Q. After you left that platform did you shoot anybody?

A. I didn't; I couldn't shoot; I hadn't anything to shoot with.

Q. I say, did you shoot at anybody?

A. No, sir.

Q. Did anybody direct you to shoot at anybody?

A. No, sir.

Q. Did you arrange, or did you enter into an agreement or any condition with anybody on that morning to shoot at anyone?

A. No, sir.

Q. Now when you left the platform where did you go to?

A. I was going out with my usual job, as you may call it, to do—I was going to meet employees which arrived on the train—on the eight o'clock or 8:05 train each morning, which was my duty to see that they were protected from the train to the plant.

Q. Yes. Well now, how far did you proceed before anything happened, if it did happen?

A. About 50 feet from the passenger track, which was the railroad track.

Q. Yes.

A. At least I estimate it was about 50 feet.

Q. Yes; what happened?

A. As I got there on this railroad track, to the best of my knowledge there was 10 or 15 shots that were fired that I heard, and some came in the direction of the other side of the passenger track.

Q. Were there any deputies there at that time?

A. There wasn't that I noticed; no, sir.

Q. And at the place from whence the shots came from?

A. I didn't see no deputies there; no, sir.

Q. Then what happened?

A. Then there was some four strikers made a rush, I think it was the second or third coach, at the entrance, at which there was two or three of the factory employes getting off, and it looked like they were making a rush to interfere with them.

Q. Yes.

A. And so I stood there until one employe that I particularly noticed and can remember, got up to me or alongside of me, and started for the factory and so as he did I waited until he got a few paces and followed him.

Q. Was that a young man or an old man?

A. That was an old man; he was crippled.

Q. Did you wear a red sweater that morning?

A. No, sir.

Q. Did you see any deputy about that plant—

A. No, sir.

Q. (Continued.)—wear a red sweater?

A. No, sir.

MR. STRICKER: You may cross examine.

CROSS EXAMINATION:

By MR. COAN:

Q. What is your address?
A. At the present time—
Q. What was your address last January?
A. 207 West 14th street.
Q. New York?
A. Yes, sir.
Q. What address did you give at the time you gave your bail bond?
A. I think it was Plane street, if I am not mistaken.
Q. Plane street, Newark?
A. Plane street, I am pretty sure it was Plane street.
Q. What number was it?
A. That I can't remember of; I couldn't say.
Q. Did you ever live on Plane street in Newark?
A. No, sir.
Q. Who gave you that address?
A. I took it for myself.
Q. Ever live in Newark?
A. No, sir.
Q. What do you know about Plane street?
A. Nothing at all.
Q. As a mere guess you took Plane street?
A. Yes, sir.
Q. And you didn't know whether there was a Plane street in Newark?
A. I heard there was a Plane street.
Q. From whom did you hear it?
A. From different people resided in Jersey at different times.
Q. Who were they?

A. I couldn't say.

Q. What time was it you were employed by the O'Brien Agency?

A. On the 5th of January.

Q. How did you come to go there at that time?

A. I was told of the job while in New York.

Q. Who told you?

A. A friend of mine.

Q. Who was he?

A. John Mously, a man named John Mously.

Q. Where did he tell you?

A. He told me about 13th street and Seventh avenue.

Q. What is his business?

MR. McCARTER: Is that material?

THE COURT: I don't think it is important. Proceed with the examination.

Q. That was your line of business, isn't it?

A. I have been on different jobs.

Q. As strikebreaker?

A. No, sir.

Q. As what?

A. As a guard.

Q. Were you a guard at Calumet?

A. Yes, sir—not Calumet, in Michigan, Houston City or Houston county, at the strike there.

Q. What strike was on there?

A. The Copper Works, the copper mine.

Q. Where else were you a guard?

A. I was a guard over in Utah.

Q. Where?

A. Bingham Canyon, Utah.

Q. Where else?

A. And in South Dakota.

Q. Where else?

A. Well, there are different ones I have been on. I may forget the names, but I have been on

qu te a few. I was at Perth Amboy here.

Q. When were you at Perth Amboy?

A. About three years ago.

Q. What plant were you at there?

A. The Guggenheim smelters.

Q. Are there any others you can recall?

A. Yes, sir. Mt. Hope, New Jersey.

Q. Wharton?

A. Mt. Hope.

Q. That is the same as the Wharton strike, isn't it?

A. I wasn't near Wharton.

Q. Isn't the Mt. Hope and the Wharton all part of the one strike?

MR. STRICKER: I object to that.

THE COURT: I will allow it.

A. As far as I know I should think it would be about six or seven miles from there. I was never in Wharton, I couldn't say the direction it was.

Q. Where was this strike in Michigan?

A. I left New York City on the 27th day of July.

Q. In what year?

A. 1914.

Q. Last summer?

A. Yes, sir.

Q. Weren't you—

A. No—

Q. (Continued.)—employed by strikebreaking agencies to go there?

MR. McCARTER: I object to that. What possible bearing can that have.

Q. (Repeated by stenographer)?

THE COURT: I overrule the question.

Whereupon, at 1:00 o'clock P. M. an adjournment was taken until 2:00 o'clock P. M.

AFTERNOON SESSION

May 28th, 1915.—2:00 P. M.

FRANK J. RICK resumed the stand.

FURTHER CROSS EXAMINATION:

By MR. COAN:

THE WITNESS: Could I have permission to make a couple of corrections?

THE COURT: The witness says he wants to make a couple of corrections. I think he had better do it now. What are they?

THE WITNESS: Why, the year I was speaking of on the Michigan job was 1913, instead of 1914. I think I said 1914. And the Perth Amboy job that I was speaking of was about four years ago. I think I said three.

THE COURT: Is that all?

THE WITNESS: Yes, sir.

THE COURT: Proceed.

Q. Who was the Sheriff of Middlesex county at the time of the Perth Amboy job?

A. Why, it was the Sheriff before this one, Bolschweiler, or some such name.

Q. Do you know who the Under-Sheriff was at that time?

A. I do not.

Q. What year was it that you left Pittsburgh?

A. I left Pittsburgh in 1910, 1909. Either 1909 or 1910, I am not sure which.

Q. You have been living in New York City since that time?

A. Well, I was living in Chicago about close on to a year, I should think.

Q. After you left Pittsburgh?
A. Yes, sir.
Q. Then you came to New York about 1911?
A. About 1911.
Q. And ever since you came to New York your principal occupation has been in the strike business?
A. As a guard; yes, sir.
Q. Who came down to Roosevelt with you?
A. Coming to the job?
Q. Yes.
A. Well, there were quite a few.
Q. Where did you come from?
A. From Jerry O'Brien's office.
Q. In Newark?
A. In Newark; yes, sir.
Q. From whom did you hear of this disturbance at Liebig that morning?
A. I overheard it. I don't know who was speaking of it at all. I don't remember it.
Q. Well, was it from some of the employes, or the deputies, or whom?
A. Well, it seemed to be from some of our men, some of the deputies.
Q. Where did you hear it?
A. On the platform.
Q. You can't tell us who it was you heard it from?
A. No, sir; I cannot.
Q. What time did you go out on the platform that morning?
A. I went on duty about quarter of seven.
Q. How long were you on duty when you heard of this?
A. About 20 minutes, I should think.
Q. So that you think you heard of it about five minutes after seven?

A. Yes, sir; about that.

Q. Where were you when you saw this crowd coming down the track?

A. I was on the platform of the office.

Q. How far away is that from the track?

A. From the track?

Q. Yes.

A. Well, I should judge it is about 300 feet, I might say, from the passenger track. To the best of my estimation.

Q. And where was the crowd when you first saw them?

A. They were coming from what is used as a stable on the left of the track from the direction of Carteret. They were coming down the track that way. Where I first noticed them I might say it was right opposite this here stable, so-called, or used, at least, I think it was used, from the looks of it. I was never near it, or into it.

Q. Was that up to the town?

A. No, sir.

Q. How far away from the Williams & Clark plant was it?

A. Well, about one-eighth of a mile or something of that kind.

Q. Who were on the platform with you at that time?

A. James Williams was the only one that I could remember being on with me.

Q. Was Bavier there?

A. Not that I know of; no, sir; not that I remember.

Q. Was Wallace there?

A. Not that I remember. He is the only man that I can speak of being there that I can remember.

Q. You knew Bavier and Wallace before that?

A. I met Wallace.

Q. Who was the roundsman there?

A. Bavier was the night roundsman.

Q. You knew Bavier, didn't you?

A. From there; yes, sir.

Q. And you knew Wallace too?

A. Yes, sir.

Q. Wasn't Wallace a roundsman?

A. Not as I know of; no, sir. Bavier was the only roundsman I know of.

Q. What were you on, night or day?

A. I was on days.

Q. Bavier was the day roundsman?

A. Night roundsman.

Q. Who was the day roundsman?

A. Didn't have any that I know of, at least I never had any orders from a roundsman outside of Mr. Patterson himself.

Q. I understood you to say on your direct examination that you heard those men making threats?

A. Yes, sir.

Q. What language were those threats made in?

A. They were made in a foreign language. Outside of one that was in broken English.

Q. They were made in a foreign language?

A. A foreign language. Using foreign language, outside of the one, and it was broken English.

Q. Did you understand those foreign language?

A. No, sir; I couldn't.

Q. How could you say they were making threats when you couldn't understand the languages?

A. From the waving of their arms.

Q. Then it wasn't the threats, it was the gesticulation which you saw, wasn't it?

A. I saw the waving of their arms, which made me believe the words they were speaking were curse words, or such.

Q. Then you did not hear any threats?

A. Outside of the one.

Q. It as simply your deduction from the actions of the men that you concluded were threats?

A. Yes, sir.

Q. You said, as I understood, that it was your usual duty to go out and meet the employes?

A. Yes, sir.

Q. Did you do that every day while you were there?

A. Every morning while I was there.

Q. What employes did you meet?

A. Any one who worked at the Williams & Clark plant.

Q. Well, can't you name any of them?

A. Well, the principal one was the superintendent, Mr. Rosman, I think his name is.

Q. Was he the only one who come on that train?

A. No, sir; he was not.

Q. Other men came on that train every day?

A. Yes, sir.

Q. And did you escort them in?

A. Yes, sir.

Q. Can you tell us the names of any of them except Mr. Rosman?

A. No, sir; not the names I cannot.

Q. And you escorted them in every day for two weeks?

A. Yes, sir.

Q. How many employes came on that train?

A. I couldn't just say the number.

Q. Rick, you never saw anybody over at that station before that day, did you, any of the strikers?

A. At the station?

Q. Yes?

A. No, not directly at the station; no, sir.

Q. And when there was nobody at the station there was no necessity for you going over to escort employes, was there?

A. They weren't right at the station, but they weren't far from the station.

Q. Every day?

A. Most every day, yes, sir. They had bonfires.

Q. Did you come over just the same the day they were not there?

A. The 19th?

Q. Yes. No, I say, did you come over the days that the strikers were not around the station?

A. I went over every day.

Q. What did you go over for days that there was no one around the place there?

A. There wasn't any tiime that I didn't notice somewhere someone, not saying right at the station, but in plain sight of the train, that they could see the train coming.

Q. Did you go out to the station on this morning of the 19th?

A. To the station; no, sir. I didn't go to the station.

Q. How far did you go?

A. I got within about 50 feet of the first railroad track.

Q. Who was with you?

A. Myself, that I know of.

Q. You were all alone?

A. All alone that I know of; yes, sir.

Q. Any one of the other deputies around you?
A. Not that I remember; no, sir.
Q. Or nearby?
A. Not that I remember; no, sir.
Q. Were the other deputies on the platform when you went out?
A. There may have been some on.
Q. Well, don't you know whether there were or not?
A. I ain't positively sure; no, sir.
Q. Who were accustomed to go over there to meet those employes with you?
A. Well, it was generally I and Jimmie Williams.
Q. You and Williams?
A. Yes, sir.
Q. Did Williams go over with you on this morning?
A. Not that I know of.
Q. Was Williams accustomed to go with you on every day?
A. Yes, sir.
Q. Well, Williams was on the platform with you this morning?
A. Yes, sir.
Q. And you say he did not go over that day?
A. Not that I know of.
Q. Well, if he went over with you wouldn't you know it, Mr. Rick?
A. Sir?
Q. Well, if he went over with you, wouldn't you know it?
A. I should think I would, but I didn't remember seeing him with me.
Q. You got a cripple coming away from that train, and run back with him?

A. Went with him, yes. He was a few paces with me before I went back.

Q. Was he one of the regular employes?

A. Yes, sir.

Q. Been accustomed to meet him every day?

A. Been accustomed to seeing him coming off the train.

Q. What was his name?

A. I could not say. He was an old man, gray haired, and crippled.

Q. And you have not learned what his name was?

A. Never heard his name; no, sir, never made any inquiries.

Q. During all the time that you have been over in the jail you have made no effort to find out what his name was?

A. No, sir; I have not.

Q. Has he testified here in these proceedings?

A. Not as I know of.

Q. You have not seen him on the witness stand?

A. No, sir; I have not.

Q. You made a statement in this matter to one of the Prosecutor's men, didn't you?

A. Why, there was a gentleman over there, yes. I don't know whether he was one of the—

Q. On the morning of the occurrence?

A. On the afternoon, if I ain't mistaken.

Q. Well, on the afternoon? Within a few hours after the occurrence then.

A. It was in the afternoon.

Q. Was that statement read to you?

A. Read to me; yes, sir.

Q. It was read to you?

A. Yes, sir.

Q. Is that your signature?

A. Yes, sir. Am I to read this?

Q. If you care to. Don't read it aloud. I do not object to your reading it if you want to?

A. I did not know whether it was handed to me for that purpose.

Q. You saw some shooting, didn't you?

A. I saw some shooting from the other side; yes, sir.

Q. And you saw some shooting from this side too, didn't you?

A. No, I didn't see any. I heard the reports of shots which seemed to be on our side.

Q. Did you do any shooting yourself?

A. No, sir.

Q. After the shooting from your side the strikers ran away, didn't they?

A. I do not know. I came in with this—or in the rear of this here man—

Q. Now let me ask you, Mr. Rick, in the statement that you have just identified as having signed?

A. Yes, sir.

Q. Which was made by you to Mr. Ferguson on the 19th of January last, did you use this language: "Then some of our people done some shooting, but I can't say who they were. I did not have any revolver or gun. After the shots were fired the strikers ran away. Then I came back to the office with the rest of the deputies." Did you say that to Mr. Ferguson?

A. I didn't say I come back with the rest of the deputies; no, sir. That I can remember I didn't say anything of the kind.

Q. You say this statement was read to you?

A. This statement was read to me.

Q. Is your recollection of what you did and said that morning more clear in your mind then than it is today?

A. It should have been.

Q. And you would not sign anything at that time that was not right?

A. I certainly would not, if I positively had any head on me at all; no, sir.

Q. And Mr. Ferguson sat right alongside of you when he read that statement to you, didn't he?

A. Yes, sir.

Q. And then handed it to you and you signed it?

A. Yes, sir.

Q. So what you said to Mr. Ferguson and what he read to you was correct, wasn't it?

A. Yes, sir.

Q. Did anybody go out with you that morning?

A. Well, there may have been three or four men that started with me as far as the corner of the fence. Whether they went out further with me I don't know.

Q. I ask you if you didn't say to Mr. Ferguson at that time, and if it wasn't taken down in this statement to you—

MR. McCARTER: Look at the statement and see if he is right.

Q. "We went out to meet the train coming in with employes of the company." What was the answer?

A. What is the question, please?

Q. (Repeated by stenographer.)

A. We started; yes, sir; three or four, as I mentioned.

Q. No. The question is, did you say to Mr. Ferguson that you went out? We went out?

A. We went out; yes, sir.

Q. I want to know who the "we" were you referred to?

A. Jimmie Williams is one and as I told you, he is the only one I remember.

Q. Haven't you just told me here this afternoon that Jimmie Williams didn't go out with you?

A. To the corner of the fence he did.

Q. Is that what you said here this afternoon?

A. That he didn't go out with me?

Q. Yes.

A. You asked me if I remembered any one more, and I said Jimmie Williams. Jimmie Williams.

Q. Didn't you say that Jimmie Williams went out with you usually, but that on this particular day you did not see him?

A. I don't remember so; no, sir.

MR. McCARTER: No, nor I either.

A. I don't remember.

MR. COAN: I suppose that is fair.

THE COURT: Anything further?

MR. COAN: I think that is all. I offer this statement and ask to have it marked as an exhibit.

THE COURT: Let it be admitted.

(Statement entered in evidence and marked Exhibit P-8.)

JOHN C. MORAN, one of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Moran, you are one of the defendants?

A. Yes, sir.

Q. And where do you live?

A. 269 West 39th street, New York City.

Q. How long have you lived in New York?

A. Off and on since 1905.

Q. What occupation have you enjoyed since you were old enough to work, and commenced to work?

A. Generally as a waiter or restaurant man, cook.

Q. Your profession is the restaurant work?

A. Yes, sir.

Q. You were one of these deputy sheriffs?

A. Yes, sir.

Q. Had you ever done work of this character before?

A. Yes, sir.

Q. Where?

A. I worked in Paterson during that silk strike for four weeks.

Q. Guarding property?

A. Yes, sir.

Q. Anywhere else?

A. That is the only two places as a deputy.

Q. This and that?

A. As a deputy; yes, sir.

Q. You acted as guard, but you were not sworn in as a deputy besides this other place?

A. No, sir. The only two places. That is the only two places.

Q. Were you sworn in down here?
A. Yes, sir.
Q. What day?
A. January 6th.
Q. By the direction of the court we are excluded from asking any questions to what occurreed anterior to the 19th. So I will jump right down to that date. Do you remember anything that occurred there on the 19th at the plant, the day of the shooting?
A. Yes, sir.
Q. Now, I want you to turn around, speak loud and plainly so the jury can hear you, and just tell what you know about that, commencing at the earliest point that occurs to you.
A. Well, on this morning that we are talking about, January 19th, I was standing on the platform, I should judge, I don't know just what time, a little after eight o'clock, and as I looked out toward the Williams & Clark station, and the railroad property, I saw a large crowd of men which I should think was about four or five hundred, I am not sure. Most of them had clubs, they were all hollering and shouting and they were throwing rocks at different times, talking in broken English, to come on, and calling to come out, and calling several names. And then I heard somebody say the train is coming, and as I looked down there I saw an obstruction. I saw a red flag and a big crowd of men there, and I heard the bell on the engine ringing, and the whistle blowing. And somebody said, I don't know who it was, let us go out there, and I made up my mind to go out and remove the obstruction. I started out of the gate toward the depot, and I had nearly reached the end of the fence when one of the strikers raised his arm and shot. As he shot I

turned back and run back the way I came, up this runway on to the platform and started for the little hose house behind the office building in order to put on the fire hose which is there to keep these men back if they attempted to come on the company property. I had no weapon or anything, and I had no chance to defend myself against these men. I rolled the hose off the round wheel, whatever you might call it, and connected it with the pipe, and got things ready as much as I could. I don't know how long it took, and I was getting ready to turn on the water if we needed it, and when I come back, I don't know how many minutes, everything seemed to be over. The train had come at that time, was on its way to Carteret; it had passed.

Q. What duties did you have in the plant during those two weeks that you were there?

A. Well, I was a commissary man, a waiter, taking charge of feeding the men who were employed there.

Q. You said you had no weapon with you at all?

A. No, sir.

Q. And where was this hose, can you point out on the map?

A. I think so.

Q. Or on the tracing, where the hose was located that you went back to.

A. I think I can.

Q. Get acquainted now with the map so that you will know. Do you see the office building?

A. Yes, sir.

Q. Where was this platform you are talking about in front of that office building?

A. The platform is right here, I should judge (indicating), in front of the office.

Q. Now, where was the hose that you went to manipulate?

A. This hose is a little—I think it was a little thing right behind this building.

Q. Right behind the building that is marked office?

A. Just behind this building; yes, sir.

Q. Take your seat now.

A. I don't think it is on there.

Q. Tell us about that hose? Was it in a little building?

A. Yes, sir; it was in the building, and it was on kind of a wheel, I think, that as you rolled the hose off it comes off of the wheel, and then the place where you connect it with the water with the pipe.

Q. You went out on the outside of the gate for about a distance of about how far?

A. Over near to the end of the gate.

Q. End of the fence or the gate?

A. End of the fence that goes along the property.

Q. Go to the map again and show to the jury how far outside of the gate you say you went?

A. I came right down this runway here in front of the office, came away out here, about up to there (indicating), nearly to the end of the fence.

Q. Before it turns the corner and goes north?

A. Yes, sir.

Q. That is what you mean by the end of the fence?

A. Yes, sir.

Q. What was it happened just as you got that far?

A. Well, as I got there, there was a man—some of the men in this crowd here, I should judge

what they call strikers, he raised his arm and shot at me, and that is when I turned back and run back to the office.

Q. You ran back, did you?

A. Yes, sir.

Q. You may take your seat. Before you went out, while you were observing the strikers, did you notice anything in their hands?

A. Yes, sir. A large number of them had clubs and stones.

Q. Did you notice anybody doing anything with the stones from that crowd?

A. Yes, sir. Every few minutes they would throw stones at the building, or toward where the people were where I was standing.

Q. I will ask you this question: Who was with you, if you recall, among the deputies whom you knew on that platform?

A. Why, I didn't really notice who were on there this morning. It was all excitement on this morning, and these men were out in front. These deputies were there, but I can't recall any of the men.

Q. About how many were there?

A. Well, there was quite a crowd there, I should think 30 or 35. I don't know the number.

Q. Did you see any man around the plant among the deputies that wore a red sweater?

A. No, sir.

MR. McCARTER: That is all. Cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Where were these 30 or 35 deputies?

A. Well, they were right there on the platform in back of the gate, standing, I should think, a distance of 10 feet or so.

Q. Were you amongst them?

A. I was in—I came up amongst them; yes, sir.

Q. You know them?

A. No, I can't say I know them. I knew them being there waiting on them; yes, sir.

Q. Certainly. You had been there from the 5th of January with these deputies, hadn't you?

A. Yes, sir.

Q. Well now, who were they on that platform, what deputies that you had known and got acquainted with from the 5th of January to the 19th? What deputies were on that platform?

A. I don't know.

Q. Well, you saw them?

A. I saw them, but I was so busy watching these other men across I didn't notice who the men were.

Q. Well, there could not have been any other deputies than those you had known for two or three weeks? There could not have been any other deputies, could there?

A. No. They were all our deputies, I think.

Q. What?

A. I think they were all the same deputies; yes, sir.

Q. And how were they armed?

A. I can't tell; I know with sticks.

Q. What did they have?

A. Sticks and clubs, and what I should judge was stones in their hands.

Q. How many clubs?

A. I don't know.

Q. About how many?

A. Pretty near every one that I saw had clubs and were brandishing them in the air at us.

Q. You saw them all? You were standing there looking at them, weren't you?

A. Yes, sir.

Q. Well then, they all had clubs?

A. I don't know.

Q. Well, pretty nearly all?

A. As many as I saw, quite a number.

Q. What kind of clubs?

A. Well, just long sticks. I say I should think something that represented a pickaxe, I should judge.

Q. In addition to these clubs, you say they had what else in their hands?

A. What I judged to be stones.

Q. Well, did the men that had sticks in their hands have stones in the other hand?

A. No. What I meant to infer was that some had—a good many had clubs and some had stones because I know some of them threw stones at us.

Q. Where were they when they commenced to throw stones at you?

A. They were down near the station, almost to the station, perhaps a little bit above the station, and over on the track.

Q. What kind of stones did they throw at you?

A. I didn't notice.

Q. You didn't notice the stones?

A. No, sir.

Q. Did they throw any clubs at you?

A. No, I didn't see them throw any clubs.

They were brandishing the clubs in the air.

Q. Did you see Wallace there?

A. No, sir.

Q. Mullen?

A. No, sir.

Q. Did any one of these nine men or ten men, did you see them there?

A. Not that I remember.

Q. In what part of the transaction was it that you decided that you would resort to the hose?

A. That was when I went out to the end of the fence and when they fired at me.

Q. Somebody fired at you?

A. Well, I was about the last man there, and they fired, and they fired toward the factory.

Q. Not at you?

A. Yes, I think it was at me. He pointed point blank and fired.

Q. And you happened to be the last man of the deputies that went down off the steps?

A. I don't know that I was the last one, but I was very near the last of them.

Q. May have been somebody else there they fired at—may have fired at, wasn't that so?

A. I didn't get that.

Q. It may be that there was somebody else there who this man fired at?

A. Possibly.

Q. Who was the last man?

A. I don't know.

Q. Didn't even know that?

A. No, sir.

Q. You knew yourself, didn't you; you knew you were there?

A. Yes, I was there.

Q. That is, you were certain of that?

A. Yes, sir; I am certain of that.

Q. What had become of the rest of these deputies when you or one or two others had left this point and the man in the crowd fired at you, what had become of the rest of the deputies?

A. They had turned almost at the end of the fence, that is the last I remember. That is when I turned around.

Q. That is the last you saw of the deputies?

A. Yes, sir.

Q. That is the last you saw of the whole transaction?

A. That is the last I saw of the whole transaction; yes, sir.

Q. What became of these two or three that were left with you after the body of the deputies had turned around the fence. What became of these two or three people?

A. I didn't say two or three people were left with me, Mr. Wescott.

Q. Was there anybody left with you?

A. Not that I know of.

Q. Why didn't you go with the deputies?

A. Why didn't I go with the deputies?

Q. Yes?

A. I was intending to go with them until these men shot from across the tracks from over near the deputies.

Q. And that took your nerve and you thought you would return?

Q. And you retreated to the hose house?

A. Yes, sir; I thought—

Q. Thought what?

A. I thought that the men may advance on us, and I wanted to get out of the way and possibly keep them back, turn on the water.

Q. How were you going to keep them back?

A. With the hose there.

Q. This crowd had guns and revolvers?

A. What is that?

Q. This mob that had been throwing stones had revolvers, didn't they?

A. I only saw this one man shoot.

Q. Didn't you hear somebody shoot besides this man?

A. At this time I heard I should judge—I heard about four or five shots.

Q. Before that?

A. No, at that time when I returned, after I returned, I heard more shots follow.

Q. Your idea was that if you got back there and turned the hose on them, you would stop that wild armed mob; that was your idea?

A. Yes, that was one of my ideas came into my mind when I was going back. That wasn't my first.

Q. How big was this hose?

A. Why I don't know; I should judge it is five inches in diameter.

Q. Did you ever try it on anybody?

A. No, sir. It is a large hose, I never measured it. I know it is a large fire hose.

Q. How long had you worked that hose?

A. Well, I don't think I worked, I don't know how long.

Q. About how long?

A. Not very long.

Q. And what did you do with the hose?

A. I took it off this circle, or whatever it is.

Q. Yes?

A. And took the end and attached it to the water pipe.

Q. And then what did you do?

A. Well, then I came back again toward the—

Q. Came back where?

A. Ran the end of the hose back near the platform.

Q. Then what did you do?

A. Straightened out the hose.

Q. And then what?

A. That is about all I did.

Q. Stood there with the hose in your hand ready to squirt water on them?

A. No, sir; I didn't have the water on, I didn't stand there.

Q. How long did you stand beside the hose on that platform?

A. Didn't stand there at all.

Q. Where did you go after you got the hose out?

A. Well, when I got the hose on, I came on the platform again.

Q. Then what did you do, put the hose down on the platform?

A. No, the hose was lying right there in back of the building, and I left it there.

Q. Didn't bring the hose back to the platform?

A. Didn't reach to the platform.

Q. Was it your idea you might surprise them by having the hose behind the buildings when they came in?

A. No, sir.

Q. You got the hose all fixed?

A. Yes, sir.

Q. Ready for dousing the people when they came in; and you left the hose there and went back on the platform?

A. After—yes, sir.

Q. How long did you stay on the platform?

A. I didn't stay there very long.

Q. What did you do while you were there?

A. Well, I saw a crowd of people around go-

ing up the other way, that is all.

Q. Crowd of people running where?

A. Round up near the railroad track.

Q. What did you see the crowd of people doing up near the railroad track?

A. Some were going toward the village and some standing on the track.

Q. Did you see any running?

A. Not when I came around.

Q. In the meantime did you hear any shooting going on over towards the depot?

A. Yes, sir; I heard shooting when I was back fixing the hose.

Q. Did you hear any shooting when you came out and stepped on the platform?

A. No, sir.

Q. Where did you go from the platform?

A. Afterwards I went back to the commissary.

Q. Went back to the what?

A. Back to the kitchen—the commissary.

Q. Did you see any of the deputies come back to the kitchen?

A. No, sir.

Q. Not one of them?

A. No, sir.

Q. Did you see any after they did come back?

A. No, sir.

Q. Where did you see the deputies next?

A. The next time I think was lunch time, or dinner time.

Q. And from the time you left that platform until lunch time, you didn't see a deputy?

A. I possibly may have seen a deputy around there, I don't know.

Q. Well, which one did you see?

A. Why, I think everybody there was a deputy. I saw a cook and I saw a dishwasher and I

saw a waiter. They were all deputies, I believe.

Q. Give me the names?

A. Well, Batterson, that is one I know.

Q. He was the leader, wasn't he, of the deputies?

A. No, sir; he was the cook.

Q. Who was the leader of the crowd that day?

A. I don't know.

Q. Who was the boss of the deputies anyhow?

A. The boss?

Q. Yes?

A. I don't know as there is any boss there.

Q. The deputies had no captain or leader that instructed them or controlled them?

A. Boss of the deputies?

Q. Yes?

A. The man who—

Q. Yes?

A. —I recognized Mr. Patterson as boss.

Q. The gentleman you saw come in court here the other day?

A. Yes, sir.

Q. The tall man with the black moustache?

A. Yes, sir.

Q. He was the captain. Did you see him there that morning?

A. I don't think I did.

Q. Well, did you see any other one that you knew?

A. Well, what time was this, please?

Q. Did you tell the deputies you had the hose ready?

A. No, I don't think so. I told the fellows in the kitchen I had the hose already.

Q. Who was it you told there?

A. I told Walter Batterson.

Q. Who else?

A. I think I told Tony. I am not—
Q. Tony here?
A. No, sir.
Q. Who else did you tell. Tony who.
A. I think his name is Tony Simone—Tony Simone.
Q. Tony Simone?
A. Yes, sir.
Q. Tell anybody else?
A. I think that is all.
Q. Do you mean to tell this court and jury that after you had gone to all that trouble and gotten that big hose straightened out to be ready for an assault on the establishment, when the deputies came back you didn't tell them about it?
A. I might have possibly said something about it at meal time. I don't know that I did though.
Q. You had no gun, I understand?
A. No, sir.
Q. Did you have a gun during any of the time you were there?
A. No, sir.
Q. Not once?
A. No, sir.
Q. Did any of the deputies have guns?
A. I don't know.
Q. Did you have a revolver?
A. No, sir.
Q. Not once?
A. Not once.
Q. What did you have?
A. I didn't have anything.
Q. Not even a club?
A. No, sir.
Q. Not even a stick?
A. No, sir.
Q. Not even a weapon of any sort. How many

times have you been connected with strikes before?

A. Why I have been in quite a number.

Q. How many?

A. I can't say how many—quite a number.

Q. Well, where were you born and brought up?

A. I was born in Holyoke, Mass.

Q. How old did you say you were?

A. 32 years old.

Q. Well, give us an idea of your life since your birth. How long did you live in your birth place?

A. Well, I didn't live there very long in Holyoke, my parents moved across the river, the Connecticut River, to South Hadley Falls.

Q. How long did you stay there?

A. I stayed there I think until I was fourteen years old, and went to Barre, Vermont, the Goddard Seminary Preparatory School.

Q. How long did you stay there?

A. Until I graduated in 1900.

Q. Where did you go from there?

A. I went to Boston.

Q. How long did you stay there?

A. I stayed there until the Pan American year in Buffalo, and I went to Buffalo.

Q. What were you doing in Boston?

A. Working in the Adams Hotel, captain of the bell boys.

Q. What did you do in Buffalo?

A. I had a little lunch room.

Q. How long did you stay there?

A. I stayed there four years.

Q. And have the lunch room during the four years?

A. Yes, sir.

Q. From Buffalo, where did you go?

A. From Buffalo, I went to New York City.
Q. When?
A. I am not quite sure, but I think some time during the year 1905.
Q. How long did you stay in New York City?
A. From that on ever since.
Q. What have you been doing in New York City?
A. Well, I have been as a general rule waiting on table, a waiter or a cook.
Q. Who got you to come down here?
A. No one got me to come down here.
Q. How did you happen to come?
A. Well, I heard Mr. O'Brien wanted to hire some men, and I went over to Newark and got a job.
Q. How did you know Mr. O'Brien wanted men, and I went over to Newark and got a job.
Q. How did you know Mr. O'Brien wanted men?
A. I was told on Broadway and 42nd street.
Q. Who told you?
A. I don't know his name. I think his name is Breen.
Q. Whereabouts in New York were you given this information?
A. 40th street and Broadway.
Q. In some building?
A. No, sir; right on the sidewalk.
Q. Right on the sidewalk?
A. Yes, sir.
Q. What address did you give here of your residence?
A. 704 Willow avenue, Jersey City.
Q. What was your residence as a matter of fact?
A. 268 West 39th street, New York City.

Q. Why did you pick out 704 Willow avenue?
A. Well, I had to do it to get the job.
Q. To get the job?
A. Yes, sir.
Q. Why did you have to do that to get the job? You were working for O'Brien at the Patterson strike, weren't you?
A. Yes, sir.
Q. Why did you have to give that number to get the job?
A. Well, I wanted to make him think that I was a resident of the State of New Jersey.
Q. Why did you want him to do so?
A. I thought that you had to be a resident of the State of New Jersey to become deputized, to become a deputy sheriff.
Q. Did you give a residence in New Jersey when you came down on the Paterson strike?
A. Yes, sir.
Q. What residence did you give then?
A. I don't remember.
Q. You gave no proof that you lived at 704 Willow avenue, Jersey City, New Jersey?
A. No, sir.
Q. Gave no proof of that?
A. No, sir.
Q. Do you know whether there is a Willow avenue there?
A. I don't remember, I don't know. I read of Willow avenue, Jersey City, and I just happened to think of the number.
Q. Just happened to think of it?
A. I knew it was one of the streets.
Q. You heard of this trouble at Liebig's that morning?
A. Why, yes; I heard them say there was some trouble.

Q. How did you hear about that, who told you?

A. The employees of the plant were talking about it down in the commissary. I think I heard them around there saying there had been some trouble at Liebig.

Q. Some of the deputies talking about it?

A. No, some of the employees.

Q. Moran talk about it? Did Wallace talk about it?

A. Not that I know of.

Q. Who did talk about it?

A. Employees that were around there, I think it was.

Q. Do you know who it was?

A. No, sir.

Q. You made a statement in this case, didn't you?

A. Yes, sir.

Q. To Mr. Coan sitting here?

A. Yes, sir.

Q. And that was on the day of the strike?

A. Yes, sir.

Q. On the day of the firing I mean, I will read it to you. See if that is your signature?

A. Yes, that is my signature.

Q. You can follow it and see if I read it correct. "I am employed by O'Brien Agency six weeks. Been here ever since employed on day duty. Came on at 8 A. M. Came over in front—

THE WITNESS: Beg pardon. That is 6 A. M.

MR. WESCOTT: Yes, that is right

Q. (Continued.)—"Came over in front of the office about 6.45. Stayed in front of the office until about 8 A. M. There was a train due about 8 A. M. and I saw a large body of men down the track, 200 or 300 men; they started to pile ties on the track. The train stopped, and a uniform

man came out and started to take the ties off. We went over to help him. We had been outside before that. We were near the end of the fence not quite so far as that when they started to shoot. The shots came from the station and thereabouts. I started to run back for a nightstick. I was not armed at all. Didn't even have a nightstick. About 20 or 25 shots were fired. I came up and met the rest of the men there having been five or six of us, and the shots were returned from here. I don't how many shots were returned. I came back for the hose to try to hold them back." Is that correct?

A. Yes, sir.

Q. You made that statement?

A. Yes, sir.

MR. WESCOTT: That is all.

TH ECOURT: Do you offer that statement.

MR. WESCOTT: Yes, sir, I want it marked.

(Statement marked in evidence Exhibit 17-P.)

RE-DIRECT EXAMINATION:

By MR. McCARTER:

Q. Then on the 19th, some gentlemen came down there; Mr. Coan I believe is one you saw?
A. Yes, sir.
Q. And asked you to make a statement, and you made it?
A. The way the statement was made, he asked me questions and I answered.
Q. You had nothing to withhold?
A. No, sir.
Q. Was there any charge against you at that time?
A. I think not.
Q. Then you were afterwards charged with manslaughter, weren't you?
A. Yes, sir.
Q. Came over here and gave bail?
A. Yes, sir.
Q. Came over voluntarily?
A. Yes, sir.
Q. You weren't arrested?
A. Yes, sir.
Q. You heard the charges against you and came over and were arrested?
A. Yes, sir.
Q. —and gave bail. How did you come?
A. We came down by train.
Q. Did you come up to Elizabeth and back that way?
A. Yes, sir.
Q. How many times?
A. I think it was twenty-one or twenty-two, I am not certain.

Q. And after you had given bail you went back to the plant?

A. Yes, sir.

Q. And started in again upon the performance of your duty?

A. Yes, sir.

Q. And then you were charged with murder and were arrested and have been in jail ever since?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

RECROSS EXAMINATION:

By MR. WESCOTT:

Q. How many came over did you say?

A. I am not certain. 21 or 22 I think.

Q. And you all came over with the County Detective, didn't you. Mr. Ferguson, in a car, too?

A. Yes, sir, I think he was with us.

Q. He came after you and brought you over?

A. I think he came—I don't know that.

Q. What?

A. I think he came up to the plant.

Q. And there was a Justice of the Peace down there, wasn't there, who had complaints against you, wasn't there?

A. I don't know.

Q. Your coming voluntarily was with the Chief of Police's car?

A. A chief of police?

Q. Yes, and a detective?

A. I didn't see any chief of police.

Q. Well, a detective?

A. I didn't know at the time—yes, I think Mr. Ferguson was with us.

Q. And you came along with him because you had to, didn't you?

A. Why I came along, yes.

Q. Because you had to?

A. I never asked him whether I had to or not. I just simply came along.

Q. And Mr. O'Brien in the mean time had arranged bail for you all, didn't he?

A. I don't know.

Q. Didn't you know there was a surety company went on your bail?

A. No, sir, I didn't.

REDIRECT EXAMINATION:

By MR. McCARTER:

Q. Did you come in an automobile over here?

A. I beg pardon.

Q. Did you come over in an automobile the first time?

A. No, sir.

Y. You came by train, didn't you?

A. Yes, sir.

Q. And you went up on the Jersey Central at Elizabethport?

A. Yes, sir—I don't just how we came. We came by train.

Q. Were you all bunched together, or were you scattered through the train?

A. We were anywhere we wanted to be. We went anywhere we wanted to.

Q. Were you aware at that time there was any detective with you?

A. No, sir.

Q. That is all.

WILLARD B. KELLER, recalled, further testified:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Keller, are you a notary public? The notary public hose name appears on this paper?

A. Yes, sir.

MR. McCARTER: What paper is this?

MR. STRICKER: That is Exhibit No. 2. It is the Conlon affidavit marked for identification.

Q. Were you present during the time of the taking of this statement?

A. No, sir.

Q. And you the person who administered the oath to Conlon before he signed it?

A. Yes, sir.

Q. Please state whether or not this statement was read over to Conlon before he signed it?

A. It was read, yes, sir.

Q. And by whom was it read?

A. By the clerk Mr. Oliver had there.

Q. You mean the young man who did the writing?

A. I can state how the—

THE COURT: Answer the question.

Q. (Repeated).

A. Who did the writing, yes, sir.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Did you say that paper was read to him?

A. Yes, sir.

Q. How do you know?

A. Because I heard it read to him.

Q. What was in the paper you heard read?

A I don't know whether I can tell it word by word. But my signature is on there and I know it was read before I signed it.

Q. Do you know whether what was on that paper was exactly what was read to him?

A. At that time, yes, sir.

Q. How do you know that?

A. Because I heard it read.

Q. What do you know was in the paper? Did you read the paper?

A. Well, I expected the man was reading what was on it, that is the paper I seen.

Q. You heard the man read something to him?

A. Yes, sir.

Q. And from that you are willing to swear, are you?

A. That my signature is on it.

Q. That the exact contents of that paper as written there was read to that boy?

A. I don't know as I can; I suppose so; I don't know. I didn't read the paper myself.

Q. Let me ask you; Are you the assistant superintendent of the Williams & Clark plant?

A. Yes, sir.

MR. STRICKER: We offer these, if your Honor please, and I also at this time also exhibit for the Defendant No. 1, the affidavit of Jacob Levinson.

THE COURT: That has been admitted, hasn't it? Isn't it marked?

MR. STRICKER: For identification.

THE COURT: Any objection to it?

(Whereupon the two Exhibits D-1 and D-2 marked for identification, were admitted in evidence.)

EDWARD PARTOS, a witness produced on behalf of the defendants being duly sworn according to law, upon oath saith:

DIRECT EXAMINATION:

MR. WESCOTT: You have been in the court room since this case started.

A. Yes, sir.

MR. WESCOTT: How long were you in here?

A. Yesterday.

MR. WESCOTT: And heard the case?

A. Yes, sir.

THE COURT: Mr. Stricker, why was that?

MR. STRICKER: I didn't subpoena this man until yesterday, and he wasn't in this court room with my knowledge, sir. I don't want any insinuations that this man was in this room with my consent or my knowledge or my sanction.

By MR. STRICKER:

Q. Mr. Partos, where do you live?

A. Up until the 25th in Chrome; at present in Newark.

Q. And when did you first go to Chrome?

A. On the first of March.

Q. And at whose request did you go to Chrome on the first of March?

A. At Mr. O'Brien's request.

Q. Where did you go?

A. Well, I went to the Sexton House, that is where I live.

Q. Speak louder.

A. To the Sexton House, that is where I live.

Q. What did you go to Chrome for at O'Brien's request?

MR. COAN: I object. How can his purpose in going to Chrome be material?

MR. STRICKER: I wanted to save time. I propose to show this man is a paid detective in O'Brien's employ, for the purpose of being in Chrome and getting all the information he could. I thought I would save some time. However, if there is any objection—

THE COURT: Why don't you ask him that question.

MR. STRICKER: I made an effort to elicit that information by degrees.

Q. Well, what were you doing in Chrome?

A. Investigating conditions during the strike.

Q. And keeping O'Brien advised as to what was going on?

A. Advised him everything that was going on.

Q. And got such information as you could in the interests of these defendants?

A. That is right.

Q. You are what is called a paid detective?

A. Yes, sir.

Q. And you are paid for coming here?

A Yes, sir.

Q. How much?

A. $3.00 a day.

Q. Do you speak Hungarian language?

A. Yes, sir, perfectly.

Q. Do you speak the German language?

A. Yes, sir, perfectly.

Q. And while in this party of men did you form the association of one Julius Jaeger?

A. Yes, sir.

Q. Did you also make the acquaintance of a man by the name of Paul Bavic?

A. Yes, sir.

Q. Did you also make the acquaintance of Andrew Gancsucs?

A. Yes, sir.

Q. Did you have a conversation with Andrew Gansucs at Roosevelt on the 15th day of April?

A. That is right, I did.

Q. And in that conversation, did he say to you that a red sweater was used to stop the train?

A. That is right.

Q. Tell us the answer?

A. Yes, sir.

Q. And did he tell you at the same time that Jaeger was leading the crowd that stopped in front of the train and signalled it to stop?

A. Yes, sir.

Q. And did he say to you at the same time the shooting by the deputies started only after one of them—that is one of the deputies, had shot in the air?

A. Yes, sir.

Q. And did he tell you at the same time that he knew of several of the strikers of which he was one, had revolvers in their pockets?

A. Yes, sir.

Q. And did he tell you that he knew a man who stood at the end of the train who was one of the strikers that had a revolver?

A. Yes, sir.

Q. Now did you have—strike that out— Were you present at a conversation held between Julius

Jaeger and Paul Bavic at Roosevelt on the 12th of May?

A. Yes, sir.

Q. And did Bavic in that conversation state that he knew the men who put the ties on the track, and also the men who broke windows a few days previous to the 19th day of January at the works of the Williams & Clark?

A. Yes, sir.

Q. And did he say in that conversation that he knew who the men were, but that he wouldn't disclose their names and that if pressed for their identity he would say Batyi Kalman, one of the deceased was one?

A. Yes, sir.

Q. You say you know Julius Jaeger?

A. Yes, sir, I do.

Q. Did you have a conversation with him at the Borough of Roosevelt?

A. I did.

Q. And in that conversation did he say that nobody knew who put the ties across the railroad? And that it was done in the night?

A. Yes, sir, he did.

Q. Did he tell you at the same time that if the shooting had not taken place on the 19th, that the strikers had planned to place a bomb in the building where the deputies were housed, that is, where they were sleeping?

A. Yes, sir, he did.

Q. And did he tell you that the plan was to put the bomb or place the bomb on the 20th or 21st of January, but that the happening on the 19th of January kind of quieted it?

A. Yes, sir, he did.

Q. And did he tell you that this could have easily been done as the buildings were close to the

fence, and that he or the strikers or both would be successful in overpowering the guards that night, that might be there, and that he could overpower the deputies or watchman?

A. He did say it.

Q. Did he tell you on the 6th day at Roosevelt that he was the life of the strike, that is, he was one of the leaders, and that he was the life of it?

A. He did say it.

Q. Did you see Paul Bavic after he left the witness stand here the other day?

A. After he left the witness stand, yes.

Q. Where?

A. I met him on the trolley car on the 24th, and also in the restaurant on the 25th or 26th.

Q. Did he say to you anything about having testified here?

A. Yes, sir, he did.

Q. What did he say about the testimony that he gave here?

MR. WESCOTT: I object. I don't recall any foundation for that.

THE COURT: What is the ground of the objection?

MR. WESCOTT: I say I do not recall any foundation for such an examination as this.

MR. STRICKER: I propose to show by this witness that after Paul Bavic left the press room that he met this man—

THE COURT: Call him and find out whether he did that.

MR. WESCOTT: We object to that.

MR. STRICKER: I cannot call him now unless your Honor will permit me to recall one of the State's witnesses at this time.

THE COURT: Is he here?

MR. STRICKER: No, sir, but I can bring him here.

THE COURT: Well, some other day?

MR. STRICKER: He is not here.

THE COURT: What do you offer to show?

MR. STRICKER: I offer to show that after Paul Bavic left this witness stand—Wait a minute. I did not know he was here.

THE COURT: Finish with this witness any other matter you have.

MR. McCARTER: Well, he will have to be recalled after Mr. Bavic leaves the stand.

THE COURT: Have you anything to ask him about.

MR. McCARTER: Not about Bavic.

THE COURT: Well, about any other matter. I can take up about Bavic after he comes in here.

MR. STRICKER: That is all we have of this witness until such time as we call Mr. Bavic.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Where do you live, young man?
A. At present in Newark.
Q. How long have you been in this country?
A. About four and a half years.
Q. How long have you lived in Newark?
A. Well, just for the last four days or three days.
Q. Last four days?
A. Yes, since the 24th.
Q. Where did you live before that?
A. In Chrome.
Q. How long have you lived in Chrome?
A. Since the first of March.
Q. What did you do there?
A. Working in the Liebig plant.
Q. What did you do before that?
A. I was working in Philadelphia as a druggist.
Q. As a druggist?
A. Yes, sir.
Q. How long?
A. For the balance of the time I am here in this country.
Q. When did you graduate as a detective?
A. I didn't graduate.
Q. When did you become a detective?
A. About 15 months ago.
Q. Who got you to become a detective?
A. I was sent to O'Brien by a friend of mine.
Q. You went to O'Brien and offered your services as a detective?
A. Yes, sir.

Q. To get information?
A. Yes, sir.
Q. About this case?
A. Well, not 15 months ago.
Q. To get information about this case?

MR. McCARTER: Oh, no, no, no.

A. No, sir.
Q. Then he did not get you to get information about this case?
A. Yes, he did, but not 15 months ago.
Q. Well, I do not care when he did it. He got you to get information about this case?
A. Oh, yes, that is true.
Q. At $3.00 a day?
A. Yes, sir.
Q. Have you been paid?
A. Yes, sir.
Q. Did not this man also say to you that every one of these strikers had a club and piece of iron in his hand?
A. Which man do you mean?
Q. Either one or both of them?
A. Yes, Andrew Ganscus said it.
Q. And didn't they say to you that they were going down to clean out this place?
A. Yes, sir.
Q. Didn't they say to you that they were going to blow it up?
A. Yes, sir.
Q. They both said that?
A. Only Yeager.
Q. How many times did Yeager tell you that?
A. Three times.
Q. He wanted you to be sure to know it, didn't he?
A. Positive about it.

A. I don't know anything about that.

Q. Why didn't you take Yeager this way, and say, look here, Yeager, do you take me for a fool, don't you suppose I can understand you when you want to tell me three times?

A. Well, the opportunities were different once.

Q. Oh, he told you he was going to do that different months?

A. Oh, no, I didn't mean that. When he told me that three different times the conditions were different then.

Q. But it was the same thing he told you?

A. Same thing.

Q. Did you have a conversation with Sheriff Houghton?

A. No, sir.

Q. And O'Brien?

A. No, sir.

Q. In Elizabeth.

A. No, sir.

Q. On the 9th of January?

A. No, sir.

MR. STRICKER: We object to that.

Q. Or the 18th of January?

THE COURT: Why?

A. I was in the south then.

MR. STRICKER: It is not material or relevant to this examination.

THE COURT: I will allow it.

Q. Did you?

A. I was in the south then. In Atlanta, Georgia.

Q. On what date?

A. On the date you said.

Q. Did he tell you he was afraid you would not know it if he only told you once?

Q. Did you have an interview with Sheriff Houghton?

A. No, sir, never spoke to him.

Q. And O'Brien?

A. Never spoke to him on that date.

Q. Well, did you at any other time?

A. No, sir, not with the Sheriff.

Q. Didn't these two men tell you that all the strikers, besides having clubs, had revolvers?

A. Which two men?

Q. The two men that you speak about?

A. Well, not exactly these two men, but Andrew Gancsus told me, and other men.

Q. Don't tell us about other men.

A. No, sir, not them two men.

Q. Did either of them tell you that all the strikers had revolvers?

A. Not Bavic, only Yeager.

Q. What?

A. Yeager told me he had it in the morning on the 19th, but not Bavic.

Q. Did Yeager tell you that all the men had revolvers?

A. He did not tell me anything about revolvers, but he told me about clubs and sticks and stones.

Q. That they all had?

A. Most of them.

Q. He told you that?

A. Yes, sir.

Q. Didn't he tell you also that they had revolvers?

A. No, sir.

Q. Didn't he tell you that they were going to shoot at the deputies?

A. He did not tell me that.

Q. What did he tell you on that subject?

A. He said that as I was successful upholding of the seven o'clock train he will be just as successful in holding up the eight o'clock train and preventing any one of the strikebreakers from entering the plant.

Q. When did he tell you that?

A. He told me that on the 15th of April, on the 6th of March, and on the 20th of May.

Q. Didn't Yeager tell you that they meant to kill these deputies?

A. No, he didn't tell me that.

Q. Didn't tell you that?

A. No, sir.

Q. Didn't Yeager tell you that they had shot at the deputies?

A. No, sir he didn't tell me that.

Q. Only told you these few things that you have stated?

A. No he told me a lot of more things.

MR. McCARTER: Well he has asked you what they were, let us have them.

MR. WESCOTT: No, please.

THE COURT: Proceed.

MR. WESCOTT: I was not asking if he had stated other things.

Q. Where did you first meet Yeager?

A. Met him in the Van Ness Hall.

Q. When?

A. On the 9th or 10th of March.

Q. Two months after the strike?

A. Two months after the strike.

Q. What was it that Jaeger told you on the 6th of March?

A. Nothing on the 6th of March. On the 6th of May.

Q. Wait. Didn't tell you anything on the 6th of March?

A. Wasn't acquainted with him at that time.

Q. Did you join the Union?

A. Yes, sir.

Q. And become one of its officers?

A. Yes, sir.

Q. In order to sell the union out?

A. Sell them out?

Q. Yes, sell them out?

A. I can't understand that question.

Q. You don't understand that?

A. No.

Q. Why did you become a member of the union and one of its officers?

A. Because I was proposed by Jaeger to become one.

Q. Because Jaeger wanted you to?

A. Jaeger wanted me to.

Q. Not because O'Brien wanted you to?

A. I don't know anything about that.

Q. What?

A. Never was told to do it.

Q. You were a detective, weren't you?

A. Yes, sir.

Q. O'Brien's detective?

A. Yes, sir.

Q. When Jaeger wanted you to become a member of the union?

A. Yes, sir.

Q. Did you tell him you were O'Brien's detective?

A. No, sir.

Q. Why didn't you?

A. It was not my business to tell him.

Q. Why didn't you?

A. It was not my business to tell him.

Q. It would have been honest if you had told him, wouldn't it?

A. Well, in a matter like this, you have to get at things that you are told to get at, and not to tell them anything about my personal affairs.

Q. And things that you were paid to get out?

A. Yes. But I was not to tell him all what my mission.

Q. And you were told to get those things out?

A. Yes, sir.

Q. And O'Brien told you to get those things out?

A. Yes, sir.

Q. And O'Brien paid you for getting those things out?

A. Yes, sir.

Q. And you get them out?

A. Yes, sir.

Q. By selling your manhood to this labor union?

MR. STRICKER: I object to that question.

THE COURT: I overrule the question.

MR. STRICKER: I move that be stricken from the record.

MR. WESCOTT: All right strike it from the record, expunge it.

MR. STRICKER: Oh yes, it has done its damage, I suppose.

THE COURT: Strike it out.

Q. You knew when you joined that union that you were deceiving the union, didn't you?

MR. STRICKER: I object to that.

Q. Didn't you?

MR. STRICKER: One moment. I object to that

THE COURT: I will allow the question.

Q. You knew that when you joined that union, you were deceiving it, weren't you?

A. I was not deceiving the union at all.

Q. Well, you knew you were deceiving Jaeger, didn't you?

A. I didn't deceive him.

Q. Didn't you withhold from him the fact that you were a detective?

A. Yes, I did.

Q. That you were paid by O'Brien?

A. Yes, I did.

Q. To get into that union and get information?

A. Yes I did but he told me—

Q. You withheld all that?

A. But he told me all he told me of his own free will.

Q. Wait. You withheld that, didn't you?

A. Yes, I did.

Q. Did your conscience smite you any when you withheld it?

MR. McCARTER: I object.

THE COURT: I overrule the question.

MR. WESCOTT: All right. That is all.

REDIRECT EXAMINATION:

By MR. STRICKER:

Q. Were you sent to Roosevelt by O'Brien to get this particular information?

A. Yes, sir.

MR. COAN: I object to the question as leading.

THE COURT: The same question that you asked, and he answered.

Q. And did you use any coercion?

MR. WESCOTT: I object.

Q. Or any deceit, or any artifice in getting this information?

A. None at all.

RECROSS EXAMINATION:

By MR. WESCOTT:

Q. Just frankly told him you were a detective employed by O'Brien?

MR. McCARTER: One moment.

A. That is no deceiving if I did withhold it from him.

PAUL BAVIC, recalled, further testified:

DIRECT EXAMINATION:

By MR. STRICKER:

(Paul F. Hamborsky, sworn as interpreter.)

Q. Mr. Bavic do you know this man (indicating)?

A. I know him.

Q. Do you remember the other day when you were on the stand?

A. I remember.

Q. Did you meet him after you left this court room?

A. I have met him out on the street.

Q. Did you meet him in the restaurant that day?

A. I had dinner with him.

Q. And you spoke about the testimony you had given here?

A. I have not spoken to him about it.

Q. During the whole meal?

A. I haven't spoken to him anything. He always spoke about his steak being too hard.

Q. And that is all that was said during the whole meal?

A. Yes sir. That was all.

Q. How long did the meal take?

A. About fifteen minutes at the most.

Q. And din't you at that time tell him that you had lied on the witness stand?

A. No.

Q. And didn't you at that time tell him that knowing him, Jaeger, or Gancsucs, because you

didn't want to put them in bad, or words to that effect?

A. Sir, I have not said that.

Q. And didn't you at the same time say that you knew who the men were who put the ties on the track, but that you would not disclose their names?

A. Surely, I have not said it.

Q. And didn't you at the same time tell him that Jaeger either directed putting the ties on the track, or assisted in it, or did it himself, and that you would not disclose his name on the witness stand?

A. I have not spoken a word about the whole thing.

THE EIGHTH JUROR: I think that man ought to stand back and give this man on the stand a fair show. He has all the questions.

THE COURT: Yes, stand back young man. Now proceed.

MR. STRICKER: That is all, sir.

THE COURT: Any questions?

MR. WESCOTT: No.

MR. STRICKER: That is all.

EDWARD PARTOS, recalled, further testified:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. The other day after this witness had been on the stand, did you meet him?

A. Yes, sir.

Q. Where?

A. In a trolley car.

Q. Did you go to a restaurant with him?

A. Well, yes, sir it was the next day.

Q. Or the day after?

A. The day after.

Q. Did you have a conversation with him?

A. I did.

Q. Where?

A. In that little Hungarian restaurant.

Q. Whereabouts?

A. Up here on the next street. I do not know the street name.

THE COURT: I am very sorry to say that the 5th juror is so much indisposed that we will not be able to proceed further with the trial today. He has some kind of billious difficulty that he is subject to, but he says if he could get to the hotel and take rest, and take some remedy that he knows about, he will be all right in the morning, but he would not be fit to go on this afternoon.

(Whereupon, an adjournment was taken until Saturday, May 29th, 1915, at 9.30 A. M.)

JAMES R. ROSSMAN, JR., a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. McCARTER:

Q. Mr. Rossman, are you connected with the plant of the Williams & Clark?

A. Yes, sir.

Q. What capacity?

A. I am Superintendent.

Q. How long have you been superintendent?

A. A year the first of July.

Q. Were you at the plant, did you come in on the eight o'clock train on the morning of January 19th?

A. No, sir.

Q. Had you expected to arrive on that train?

A. Well, it had been my custom to.

Q. On previous mornings during this strike what train had you come on?

A. Usually the eight o'clock, and sometimes the nine, but it was usually the eight o'clock.

Q. As you arrived previous mornings did you notice any guards or deputies standing in the neighborhood or near the station?

MR. COAN: I object.

THE COURT: I will allow the question.

Q. (Repeated by stenographer)?

A. No nearer than the corner of our fence.

Q. Did you know what they were there for?

MR. WESCOTT: I object.

THE COURT: How is that competent?

MR. McCARTER: I want to show that they were there to protect the men that came in on the train.

THE COURT: How does he know that?

MR. McCARTER: I ask him if he knows.

THE COURT: You asked him what they were there for?

MR. McCARTER: That is the question.

MR. WESCOTT: Even if he was there to protect the men at the corner of the fence it has no earthly—

THE COURT: Well, the effect of it is another question. I will allow it, if the question is as you say it is.

Q. (Repeated by stenographer)?

THE COURT: Do you know? Just answer yes or no.

A. Yes.

Q. What were they there for?

A. Why, to protect those coming off the train from the mob that was usually in the vicinity.

Q. Were there mobs there?

A. Yes, sir.

Q. Were there guards there any mornings before this?

A. Yes, sir.

MR. WESCOTT: I will object to the question.

THE COURT: I will allow it.

Q. What time did you get there on the morning of the 19th?

A. About ten minutes after nine.

Q. And do you remember giving one of the deputies any assistance in the way of medical help or any surgical help?

A. Yes, sir.

Q. What?

A. One of them injured his foot.

Q. I beg pardon?

A. One of them injured his foot, as I remember it.

Q. What did you get for him?

A. And we gave him the factory medical kit.

MR. McCARTER: Cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Which one was it?

A. Why, as I remember it was the baldheaded fellow. I don't know his name.

Q. You knew these guards, didn't you?

A. Well, I knew them by sight.

Q. You know these by sight?

A. I know some of them and some of them I don't.

Q. Were they there?

MR. McCARTER: Where?

MR. WESCOTT: At any time.

MR. McCARTER: I object.

THE COURT: I will allow it. That is, any time you refer to. At the corner of the fence.

MR. McCARTER: Yes.

Q. At the corner of the fence?

A. Well, I don't remember the men that were there. They would be different men there.

Q. Identify the man that you gave medical assistance?

A. This gentleman here in the middle.

Q. That is the one you gave medical treatment to?

A. As I recall it, yes.

MR. McCARTER: Wallace stands up.

Q. How many of these guards did you see at the corner of the fence at different times?

A. Well, sometimes there would only be one there and sometimes there would be two or three.

Q. That is all you saw there?

A. Yes, sir.

MR. WESCOTT: That is all.

FRED RICK---Recalled

FRED RICK, recalled, further testified:

By JUROR NO. 12:

Q. Mr. Rick, you testified that there was four men held you up?

A. Yes, sir.

Q. Now you also testified that there was one man shot?

A. Yes, sir.

Q. Now those four men that held you up, can you identify those?

A. Well, there was only one of those I could identify.

Q. Now the man who shot, how far was he from you?

A. Oh, I should say about two hundred yards or may be 250 yards.

Q. And you say he shot at the deputies in the direction of the strikers?

A. I did, yes, sir.

Q. Can you identify him?

A. The fellow that shot? I could not. He was too far off.

By JUROR NO. 3:

Q. How near were those men to you as a whole?

A. You mean the strikers?

Q. Yes.

A. The bunch that was near the railroad track the viaduct, and about ten—I should say there were about 25 of them in the group.

Q. The nearest man to you?

A. The nearest man to me?

Q. Yes.

A. The nearest man to me at that time was

about five feet. That was one of the deputies, but the other fellows was—

Q. I mean hold up?

A. The whole bunch was on the other side of the track, the railroad track, a distance of about ten feet from the track.

Q. They were 25 feet from you?

A. About that, yes.

By JUROR NO. 12:

Q. Did you at any time express a desire to the authorities at the Williams & Clark plant to have these men apprehended that held you up ,or the man that shot?

A. No, sir.

MR. McCARTER: You appeared before the Grand Jury, didn't you?

A. I did.

THE COURT: We are not going into the examination of this witness. He was recalled in order that the jurors might ask some questions. You can't try the case all over again.

MR. McCARTER: But if the jurors have listened to some questions, we have a right to pursue it.

THE COURT: Proceed then.

By MR. McCARTER:

Q. How near— You speak of four men, one of whom spoke to you—

A. Yes.

Q. And three of whom had clubs—

A. Yes.

THE COURT: That he has testified to.

MR. McCARTER: Will your Honor permit me to finish my question.

Q. Accosting you as you got off the train and having a conversation with you. How near were those men to you?

A. One of them was close enough to put his hand on me.

MR. McCARTER: I think those are the men Mr. Stult referred to. I don't know That is all.

FRANK PIRRONG, a witness produced on behalf of defendants, being duly sworn according to law, on oath saith:

DIRECT EXAMINATION

By MR. STRICKER:

Q. Mr. Pirrong, you are an employee of the Williams & Clark plant?

A. Yes, sir.

Q. And were you employed by that company on the 19th day of January?

A. Yes, sir.

Q. How long were you employed there?

A. Nine years.

Q. And were you at the—where do you live?

A. Carteret.

Q. You work in the office?

A. Yes, sir.

Q. And you were there during all that strike?

A. Yes, sir.

Q. State whether or not it was the custom of the deputies during that strike to meet the trains for the purpose of escorting the people from the trains to the office?

A. It was always customary for the deputies to go out to the corner of the fence every morning.

Q. What have you got to say about the evening when the employes were leaving?

A. That practice I couldn't say much about.

MR. STRICKER: Cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. How many went out to the depot?

A. I couldn't state. I have no recollection. I don't know

Q. They just went to the corner of the fence?

A. Yes, sir.

HENRY CARLESS, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Carless, you are a counselor at law?
A. Yes, sir.
Q. Practicing in the State of New Jersey?
A. Yes, sir.
Q. With an office in Newark?
A. Yes.
Q. You have been in attendance at this trial?
A. Yes, I have been here every day.
Q. Do you know Paul Pavic?
A Yes, I know him.
Q. Andrew Gancsus?
A. Yes, I know him.
Q. John Musica?
A. Yes.
Q. Joe Ferdy?
A. Yes.
Q. Stephen Bakacz, do you know him?
A. Yes.
Q. Stephen Poth?
A. Yes.
Q. John Sovenski?
A. Yes.
Q. Frank Goesis?
A. Yes.
Q. John Maxs?
A. Yes.
Q. All witnesses in this case?
A. I don't know whether they all were. Most of them were.
Q. State whether or not you are the attorney

for those men in suits pending in the New Jersey Supreme Court, brought for damages for injuries sustained by reason of the shooting which is being tried here?

MR. COAN: I object.

THE COURT: How is that competent.

MR. STRICKER: We want to show the interest of those witnesses.

THE COURT: What interest?

MR. STRICKER: Why, they have an interest.

THE COURT: I overrule that. They have no interest in this controversy.

MR. STRICKER: I pray an exception to your Honor's ruling. That is all.

Exception allowed. Let it be sealed.

JAMES J. BERGEN,
Judge.

Now, gentlemen, may I have that original complaint?

MR. McCARTER: I would like to say to counsel on the other side, we would like to see that envelope containing one small shot that was produced.

MR. COAN: There was not any such envelope produced.

MR. STRICKER: There was an envelope with one single shot.

MR. COAN: Among our papers here, but it was not produced in our case.

THE COURT: Mr. Stricker, there has been nothing of that kind offered in evidence.

MR. STRICKER: There was a witness on the stand, he was asked whether a shot was picked out from his body. He said it had been. That shot was in an envelope and it was passed to me by one of the gentlemen on the other side of the table.

THE COURT: Do not repeat that, because I do not recollect any such testimony.

MR. McCARTER: I do, and it is a fact.

THE COURT: I am not disputing it. I say I do not recollect it. If you will tell us the name of the witness, we will get the record and have it read, if you think it is important.

MR. STRICKER: We do not want the record read. We want the—

THE COURT: I want that part of the record read. I have no recollection of any such thing being offered in evidence, or any ruling on it. Now I may be wrong about it. I want the record.

MR. STRICKER: I cannot go through the whole record.

THE COURT: We will find it if you will tell us the name of the witness.

MR. STRICKER: I do not at this moment recall the name of the witness, but we will endeavor to get it.

THE COURT: You say there was such a thing offered in evidence?

MR. STRICKER: No, sir.

THE COURT: Then what?

MR. STRICKER: Here is what did happen. A

witness was asked whether he had picked any of the shot from his body. He said he had. And the attorney for the other side then produced an envelope with a little shot inside of it sealed up and marked.

THE COURT: How do I know that? You may have had it in your hand. It was not submitted to the jury nor to the witness, nor to me.

MR. STRICKER: I am stating the fact now. Although your Honor did not have it in your hand, it was so small that I did not care to trust myself with it. It was passed to the other side, and as we thought would be preserved during this trial. We want it.

THE COURT: Do you want to produce it?

MR. COAN: We have no objection to producing it. We have sent for the envelope now. But the fact is the matter was not presented to any witness.

THE COURT: Mr. Stricker, you propose to offer it in evidence.

MR. STRICKER: Yes, sir.

MR. STRICKER: Now gentlemen, have you the original complaint of manslaughter there?

MR. FLORANCE: You didn't ask for that?

MR. STRICKER: I ask for it now. Any objection to the offer of this?

MR. COAN: We object to its materiality.

THE COURT: What is that?

MR. STRICKER: I offer to put in evidence

the original complaint made in this case by the Chief of Police of the Borough of Roosevelt, charging these men with this crime.

THE COURT: What is the purpose of that.

MR. STRICKER: We propose to show that it contains the names of persons other than charged in this complaint.

THE COURT: Repeat that.

MR. STRICKER: The purpose of it is to show that it contains the names of persons other than are charged here with this offence, and for the further purpose of showing that the person who apparently set this prosecution in motion has not been called as a witness.

THE COURT: That does not prove anything; If you say there is something in that complaint you want to use to contradict some witnesses, it may be material.

MR. STRICKER: No, sir, and I also want to show that there were names contained in this complaint that have been stricken out.

THE COURT: Any objection to this?

MR. WESCOTT: Certainly; what has that to do with this case. The whole world might have been arrested on a charge of manslaughter by somebody, and I understand that this complaint was made by the chief of police on information and belief.

THE COURT: Of course that don't— we are not testing the weight or effect of it.

MR. WESCOTT: It don't have any weight.

It don't prove anything that is material in this case. How can it? These men are not under charge of manslaughter. I suppose somebody else is held on the charge of manslaughter.

MR. STRICKER: This is a murder complaint, Mr. Wescott.

THE COURT: Wait until we get the papers and see what it is

MR. STRICKER: This is the paper I am offering now. That is the murder charge, and I propose to produce the manslaughter charge also.

(Court examines the paper).

THE COURT: You offer in evidence the complaint made by Henry J. Harrington against a number of persons; some of them are these defendants?

MR. STRICKER: Yes, sir.

THE COURT: And some of them being these defendants? Now what is the object of the offer?

MR. STRICKER: The object of the offer is that it contains the names that have been stricken from that complaint, in addition to the statement that I have already made.

THE COURT: What is the other ground?

MR. STRICKER: I stated the other ground on the ground that the person who has made this complaint, was not called in this case.

THE COURT: Not called as a witness?

MR. STRICKER: Not called as a witness.

THE COURT: I overrule it.

MR. STRICKER: I pray an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

Now, if your Honor please, I desire to renew this offer for the purpose of showing that no complaint was made against these defendants or persons named in this complaint, until the 22nd day of January, or three days after this alleged affray.

THE COURT: I will overrule your offer.

MR. STRICKER: I will pray an exception.

Exception allowed. Let it be sealed.
J. J. BERGEN,

Now, if your Honor please, this shot is contained in this envelope.

THE COURT: What is it you want to do?

MR. STRICKER: I want that to go in evidence. This was identified by one of the state's witnesses as the shot taken from the body of one of its witnesses.

THE COURT: Is that true?

MR. COAN: I don't understand the testimony to have been such.

THE COURT: What was the name of the witness, Mr. Stricker?

MR. COAN: Charles Rapp. We have no objection to this shot going in as the shot taken from this man Rapp.

THE COURT: Is that offered as shot taken from the witness Rapp?

MR. STRICKER: I believe that is what it is.

THE COURT: Very well, then. That will be admitted.

MR. COAN: The envelope don't go in.

MR. STRICKER: I want to see what is wrong with the envelope.

RICHARD A. PELTIER, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Mr. Peltier, you are a detective of this county?

A. Yes, sir.

Q. And have been such for 15 years or more?

A. Yes, sir.

Q. And you have assisted in the investigation of this case?

A. Yes, sir.

Q. For the State?

A. Yes, sir.

Q. Together with Mr. Ferguson?

A. Yes, sir.

Q. Is the writing on this envelope yours (handing envelope to witness)?

A. Yes, sir.

Q. Just take a look at it, if you need your glasses?

A. Yes, sir.

Q. Who did you receive this from?

A. Henry Carless.

Q. The attorney for one of the—

A. Yes, sir. The gentleman who was just on the stand.

Q. The gentleman who was just on the stand?

A. Yes, sir.

Q I notice that there is a statement on here—

MR. WESCOTT: I object.

THE COURT: You cannot introduce evidence that way.

MR. STRICKER: All right. That is all.

MR. COAN: No questions.

THE COURT: The envelope and its endorsement are not admitted in evidence. I do not know who they were made by. The contents may be admitted.

MR. WESCOTT: The shot can be taken out and put in a plain envelope.

(Small shot in envelope entered in evidence and marked Exhibit P-9.)

TONY SIMONE, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION:

By MR. STRICKER:

Q. Tony, how old are you?
A. 22.
Q. And where do you live?
A. Lodi, New Jersey.
Q. Is your home there?
A. Yes, sir.
Q. Live there with your parents?
A. Yes, sir.
Q. How long have you lived in Lodi, New Jersey?
A. 14 years.
Q. Where did you live before that?
A. New York City.
Q. And where did you live before you lived in New York City?
A. 111th Street.
Q. No. Where did you live before that. Were you born in New York?
A. I was born in New York.
Q. And you lived there until you were fourteen?
A. No.
Q. How long did you live in New York?
A. About eight years.
Q. And then where did you go?
A. To Lodi, New Jersey.
Q. You have lived in Lodi, New Jersey, ever since you were eight years old?
A. Yes, sir.
Q. In the month of January were you employ-

ed by the O'Brien Detective Agency to go to Roosevelt?

A. Yes, sir.

Q. And did you go there?

A. Yes, sir.

Q. And what day did you reach there?

A. On the 5th, at night.

Q. Where were you on the 19th day of January the day of this shooting?

A. In the dining room.

Q. At what time?

A. Half past five in the morning.

Q. And how long did you stay in the dining room?

A. Well, I stood in there until about eleven o'clock in the morning.

Q. Did you leave that dining room between half past five and eleven o'clock that morning?

A. No, sir.

Q. You are a defendant, aren't you?

MR. COAN: I object.

Q. That is, you have been indicted?

A. Yes, sir.

Q. Charged with this shooting?

A. Yes, sir.

Q. And are now in the Middlesex County Jail awaiting trial?

A. Yes, sir.

Q. Did you, on the morning of the 19th of January, the day of this shooting, see Eddie Conlan?

A. Yes, sir.

Q. Where?

A. In the dining room.

Q. About that time?

A. It was something like around nine o'clock.

Q. Did he speak with you?

A. Yes, sir.

Q. State whether or not he said to you that if you could give him any information about the deputies chasing the Hunkies away?

A. Yes, sir.

Q. Or words to that effect?

A. Yes, sir.

Q. State whether or not he didn't ask you how it happened or what had happened?

A. No, sir.

Q. Did he ask you what had happened or anything to that effect?

MR. COAN: He says no.

Q. (Repeated by stenographer)?

MR. STRICKER: Strike that question out.

MR. WESCOTT: Oh, no, we want the question in.

Q. Did he ask you what had happened?

A. He asked me all right.

Q. And what had happened?

A. Yes, sir.

MR. STRICKER: Cross examine.

CROSS EXAMINATION:

By MR. WESCOTT:

Q. Did you tell him what had happened?

A. No, sir.

Q. Is that all the conversation you had with him?

A. Well, yes, he asked me if I was out there with the boys shooting at the Hunks. I says no, sir. I told him that I was put in that dining room and told to stay there and that was my job there, and so I asked him, I said, Eddie, I said—

MR. WESCOTT: Oh, no.

MR. STRICKER: We ask for the rest of the conversation.

MR. WESCOTT: No. I asked him if he had any other conversation. Not what it was.

(Record read by stenographer.)

Q. Isn't that correct. He asked him if he had any other conversation, and then he goes on to tell it. That was not responsive to the question.

Mr. McCarter prays exception for not letting the witness go on and tell the story.

Exception allowed. Let it be sealed.

J. J. BERGEN,
Judge.

MR. STRICKER: Is that all, Mr. Wescott?

MR. WESCOTT: That is all.

RE-DIRECT EXAMINATION:

By MR. STRICKER:

Q. Did you have any other conversation with him at that time?

A. Yes, sir, I had one with him. I asked him where was he—

MR. WESCOTT: No. I object.

MR. STRICKER: I submit this is fair.

THE COURT: Conlan was not asked about this at all.

MR. STRICKER: Yes, he was.

THE COURT: You called this witness to contradict Conlan, and you have laid the foundation by asking Conlan certain questions, and you have it in the record.

MR. STRICKER: Yes, sir.

THE COURT: Ask this witness whether Conlan did or did not say the things which you directed his attention to. I cannot recall that, of course.

MR. STRICKER: We have that. Now, Mr. Wescott asks was there any other conversation, did you have any other conversation with him, and the witness said, yes, I did, and he starts in to give the detail of that conversation. Now, they having opened the door to that I respectfully submit we have a right to—

THE COURT: No. They object to that answer as not being responsive. I sustain that objection.

MR. McCARTER: There is no such objection. Your Honor is mistaken about that. He was interrupted.

THE COURT: Then you do not make any objection?

MR. WESCOTT: Why, certainly we do.

MR. McCARTER: The situation is just this: There is no room for doubt about it at all. This witness was called and interrogated specifically, at the place in the record, where the witness Conlan's attention had been directed to certain questions which he, Conlan, denied. Those questions were put to this young man and he answered them. He was then turned over for cross examination, and the Attorney General asked him if he had some more conversation. He said he did, and he started on to tell, without objection, what the rest of the conversation was, and he was interrupted and said he need not go on. There was no objection or motion to strike out. He simply was interrupted. We insisted he should go on, and your Honor overruled that insistence, and we took an exception. He was then surrendered by the State, and we took it up, and insist, or contend, we have a right to complete that conversation. That is the situation.

THE COURT: I hold against you. I overrule your offer.

Mr. McCarter prays exception.

Exception allowed. Let it be seated,

J. J. BERGEN,
Judge.

MR. STRICKER: Now, if your Honor please, I desire to read into the record—

THE COURT: What is it you desire to read into the record?

MR. STRICKER: Why a copy of the testimony taken before the Assembly Investigating Committee.

THE COURT: Has that been proven?

MR. STRICKER: The other side has agreed to this?

THE COURT: That all that record shall go in?

MR. STRICKER: Oh, no, no.

MR. COAN: When did the other side agree to that?

MR. STRICKER: Didn't you agree to that?

MR. COAN: No, sir.

MR. STRICKER: Didn't you agree to that?

MR. WESCOTT: Never heard of that before.

MR. STRICKER: I see you gentlemen in the rear room yesterday or the day before.

THE COURT: Don't waste time, the other side do not agree.

MR. McCARTER: We will have to defer this case then until Mr. Salmon the stenographer can be called, and this is what occurred. In your Honor's room at recess the day before yesterday I was talking to Mr. Backus and Mr. Stryker, Assistant Attorney General, and one of the counsel, and your Honor and Mr. Stricker here, and we asked them—and I think Mr. Coan was present—whether or not it would be necessary for us to send for the stenographer, Mr. Salmon, who took the notes before the Legislative Committee, and they conferred, and they said No, and we haven't sent for him for that reason. Now, is that true, or not?

MR. WESCOTT: We do not dispute that.

MR. McCARTER: Then we propose therefore not to send for the original stenographer to read from his notes, but will read so much of his notes as the witness Jaeger had his attention called to.

THE COURT: That is a very different thing from reading the whole of the testimony.

MR. STRICKER: We only want to read about one page?

MR. COAN: I was not present at or had no cognizance of any such conversation.

THE COURT: I recall they did call Mr. Jaeger's attention to some matter they said he testified to before the Legislative Committee and he made reply to it, and now they propose to read from the record a page which refers to that particular question. Now the question at present is whether the state objects to that. I don't understand how that it is the entire record. It is only a page Mr. Stricker says that has reference to a matter to which Mr. Jaeger's attention was called.

MR. WESCOTT: Whatever foundation was laid as the notes will show to contradict Mr. Jaeger, we haven't the slightest objection to it being read into the record. Not the slightest; but nothing else.

MR. McCARTER: We haven't any thought of anything else.

MR. STRICKER: Well, if your Honor please, might I suggest that the stenographer make a copy of this and give it to the jury in view of the entire record?

THE COURT: Give what to the jury?

MR. STRICKER: A copy of this record?

THE COURT: No.

MR. STRICKER: So he can hand them all the evidence.

THE COURT: No.

MR. STRICKER: All right.

THE COURT: You can read the testimony as if Mr. Salmon was here testifying and the stenographer will take it down.

MR. STRICKER: (Reading)

"Q. Why did you go up to Van Ness Hall then to get Frescini?

A. I thought there was nobody here to watch them fellows, I was alone here; I thought it was better I go and get some help and keep the people in order.

By MR. QUINN:

Q. Afraid there might be trouble?

A. I was afraid maybe after a while they going to have some trouble.

Q. And you thought there would be trouble on the part of the strikers when this eight o'clock train got in?

A. Yes, sir.

Q. And you were afraid the Italians might make trouble so you went and got Frescini, that is correct?

THE COURT: Is that all.

MR. STRICKER: That is all.

THE COURT: Anything further?

MR. STRICKER: We rest.

THE COURT: Any rebuttal?

MR. WESCOTT: A little.

REBUTTAL.

REBUTTAL:

MR. COAN: Mr. Laruso?

THE COURT CRIER: Not here Mr. Prosecutor.

MR. COAN: Leonard Frescini?

THE COURT CRIER: He is not here. The Italian Interpreter said neither one of those attended this morning.

MR. COAN: I desire to offer in evidence Exhibit 15 of this case for identification, a statement of Mullen which was not offered which he was on the stand.

THE COURT: Any objection to it?

(No response.)

THE COURT: Let it be admitted.

MR. STRICKER: It has been examined on in great detail and read to the jury.

THE COURT: It has been read once, hasn't it?

MR. COAN: This one has not been read as I remember it.

THE COURT: What is the next offer?

MR. STRICKER: If there are two statements we object to them. We have no objection to the one that was used here.

THE COURT: Two statements by the same man?

MR. COAN: No, sir. Statements by different men.

MR. STRICKER: Oh, I beg your pardon. I thought you had two statements.

THE COURT: He said it was marked another number. They may be received. I do not hear any objection. Proceed.

MR. COAN: I shall read the statements in a moment.

MR. McCARTER: The statement was once read.

THE COURT: Was it, Mr. Coan?

MR. COAN: Mullen's statement has not been read as I remember it.

THE COURT: You may read it.

MR. COAN: (Reading statement.) "Fred Mullen says I work for the O'Brien Detective Agency and I am a Deputy at the W. & C. Works, Roosevelt. On Jan. 19th, 1915, I was on duty at the office with a number of other deputies. About 7:40 in the morning I seen a number of strikers over at the station. There was about 4 or 5 hundred there. There was a number of them had sticks and clubs in their hands and two of them had revolvers in their hands. They was all around the station and road. I seen one man shoot towards the works of the company. One man with a raincoat on had a pick handle in his hand and as the strikers was about to get away he beat them back. Then the man with the raincoat and a man with a red sweater on put two ties on the track and an iron rail, then the fellow with the red sweater on put his sweater on a tie that he had put in the middle of the track. The strikers was all hollering stop the train. The train then came in about eight o'clock, then about 8 of us

deputies went out to the fence of the Co. While we were standing there there was two shots fired directly at us. I seen the strikers have the revolvers pointed toward us. Then they started to throw bricks at us, then they started to come on the Co. property and we ordered them to get off. Then the man with the raincoat on says, don't let them drive you away, pump it into them. Then there was a number of shots fired by the strikers. Then we rushed them from the property. Then they started to shoot again. Then some of our men fired up in the air. I did not see any of our deputies have a revolver. I did not see any man that was shot. After a few minutes the strikers went away and we returned to the plant.

Signed. FRED MULLEN."

(Statement marked heretofore P-15 for identification, entered in evidence and marked Exhibit P-15.)

MR. COAN: Now I wish to read the Ricks statement.

THE COURT: Hasn't that been read?

MR. McCARTER: Every one of them was read, and that was read the day before.

MR. COAN: This is not the deputy Ricks. This is the witness Ricks.

THE COURT: Another man?

MR. COAN: Yes, sir. The man who was recalled this morning. And this statement was not read. It was identified by him and marked for identification, but not read.

THE COURT: Read it then as quickly as you can.

MR. COAN: (Reading statement.) "Fred. Ricks says, I am employed at the plant of Williams and Clark. On Tuesday I was coming from my home in Newark, leaving E'port at five minutes of 8. Don't know what time I got to Roosevelt. When we slowed down at International, the next plant, five or six got on the train, jumping on and off. When I stopped I said I'll get off. Other fellows said no. When I got off at station a fellow said don't get off. I said, why. He said. you know what's going on there. I said I am not interfering with you. He said, you can't go in. This was at the W. & C. station. I saw men coming out from the plant and this engaged the attention of those talking to me. They left me. Those who came out of plant came up to station and heard them say get out of the way. I didn't know any of those who came out of plant. Those who came out of plant came up to the station, and mingled with those who were at the station. About 25 or 30, maybe more or less, came out of the plant. A crowd of 500 or more were around the station. Those who came out all had sticks, so did the ones around the depot. I heard hollering and shooting. I don't know who did the shooting. Saw no one fall. Don't know if any one was hit. I had left the crowd and was making my way to the plant. I went in the opposite direction from the way the deputies were coming. I haven't heard anything of any deputies being struck. Maybe a couple dozen shots were fired. Some close together, and some at intervals. I came in the office. Stayed here about an hour. I stayed in the outer room. The men who came with me, stayed in the office. I saw them pick a fellow up and carry him away. He was off the track about

the station on the opposite side of track when picked up. I don't know how he got there. Jas. Letts and John Hopkins and Olie—got off the same train I got off. My address is 98 Emmet street, Newark.

Signed. FRED RICKS."

JOHN R. FERGUSON, a witness produced on behalf of the State in rebuttal, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION:

By MR. COAN:

Q. Mr. Ferguson, you are one of the Prosecutor's detectives of this county?

A. I am.

Q. State whether or not you went with Prosecutor Florance to Roosevelt on the morning of January 19th last?

A. I did.

Q. Do you know Fred Mullen?

A. I do.

Q. Did you see him at Roosevelt on that morning?

A. I did.

Q. State whether or not he made a statement to you?

A. He did.

Q. Look at Exhibit P-15 for identification, that has just been marked in evidence, and state whether or not that is the statement.

MR. McCARTER: It is admitted it is.

MR. COAN: I want this witness to identify it.

THE COURT: What is the situation, Mr. Coan?

MR. COAN: Mullen, on the witness stand, testified that he told Mr. Ferguson certain things that are not in that statement. I want to direct Mr. Ferguson's attention to that.

THE COURT: Ask him about those things.

MR. COAN: I will, just as soon as I get the record of it here, your Honor.

MR. McCARTER: What page is that?

MR. COAN: It is on page 994.

Q. Mr. Ferguson, at the time of making that statement did Fred. Mullen say to you that they, meaning the deputies, had revolvers?

MR. McCARTER: One moment. I object to the question.

THE COURT: Upon what ground?

MR. McCARTER: Why, because counsel interpolates in the question something that is not in the statement or is not in any record here.

MR. COAN: It is in the record at the bottom of page 994.

MR. McCARTER: I am looking. "They, meaning the deputies?"

MR. COAN: That part of it is not in.

THE COURT: Just confine this question to the record.

MR. COAN: The question will not have any sense unless I identify the people referred to by the pronoun they. The record simply reads; "I never said they had no revolvers. I never said they had revolvers. I said I had no revolver."

THE COURT: Ask him if he said that.

Q. Did Mr. Mullen say that to you?

A. Repeat the question, please.

Q. Did Mr. Mullen say to jou at the time of making that statement, "I never said they had revolvers?"

MR. McCARTER: He does not pretend to say he said that. No one says, "I never said they had revolvers."

THE COURT: One minute. Mr. McCarter says you are not reading the record correctly.

MR. McCARTER: No, sir.

THE COURT: If you cannot agree—I have not been furnished with any copy of this record. I have not had the advantage counsel has had to see what has been testified to, and if you—you have to hand me up the record so that I can look at it, if you cannot agree.

MR. McCARTER: I am very glad to hand you our copy.

Q. State whether or not on the 19th of January, Fred Mullen said to you, "They had revolvers"?

THE COURT: I do not see that here.

MR. COAN: Right at the bottom of page 994.

THE COURT: He said, "I made a part of that statement." I never said they had no revolvers. He said, I never said they had no revolvers.

MR. COAN: The next sentence.

THE COURT: "I never said they had revolvers."

MR. COAN: Yes. Now, when Mullen was on the stand he attempted to dispute the authenticity or the correctness of this statement by saying that he did not say certain things that are in that statement. Now I ask Mr. Ferguson if he did say those things.

THE COURT: Ask your question.

MR. COAN: I have asked it.

Q. (Repeated by stenographer.) State

whether or not on the 19th of January Fred Mullen said to you, "They had revolvers"?

A. Meaning who?

MR. McCARTER: I object.

MR. COAN: Well, read the statement.

THE COURT: It seems to me, Mr. Coan, you would get along much more rapidly if you would ask this witness whether he took down all that was said.

MR. COAN: I will do that.

A. He did not.

Q. Did you take down all that Mr. Mullen said at that time?

A. I did.

Q. Truthfully?

A. Truthfully.

Q. State whether or not Mr. Mullen at that time told you that he was hit, and that you laughed at him?

A. I did not.

Q. Did he tell you that he was hit?

A. He did not.

Q. Did he offer to show you his leg?

A. He did not.

Q. Or any wound on it?

A. He did not.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. STRICKER:

Q. Mr. Ferguson, you assisted in the investigation of this case for the State?

A. Yes.

Q. And you got a number of statements, did you not?

A. I did.

Q. And a number of statements were obtained in your presence by the Prosecutor or his assistant?

A. They were.

Q. Did you get a statement from all the deputies that day?

A. I did not.

Q. Did the Prosecutor get statements from all the deputies that day?

A. I don't know.

Q. Did the assistant get statements from all the deputies?

A. I do not know.

Q. Do you know how many statements were obtained on that day or subsequent days?

A. I do not.

MR. WESCOTT: This is not cross examination.

Q. Have any trouble in getting these statements?

A. Did not.

Q. Did you observe whether the Prosecutor had any trouble getting these statements?

A. Not that I know of.

Q. From any of these deputies?

A. Not that I know of.

MR. STRICKER: I guess that is all.

DR. EDGAR CARROLL was recalled as a witness and further testified:

DIRECT EXAMINATION:

By MR. COAN:

Q. Doctor, you are the County Physician of this county?

A. Yes, sir.

Q. And you are in charge of the physical welfare of the prisoners in the county jail, as such?

A. Yes, sir.

Q. Do you know Fred Mullen?

A. Yes, sir.

Q. State whether or not you were called to attend him at all?

A. I attended him in the jail.

Q. When?

A. I saw him in the first part of February sometime. I don't remember the exact date.

Q. When?

A. In February, and later on in March, the 15th of March I believe was the last time I saw him until yesterday.

Q. And how many times did you see him?

A. Two, I believe.

Q. What time did you fix as the first time?

A. Some time in February.

Q. What time in February, can you fix it?

A. I can't fix it, I haven't a record of it.

Q. What was wrong with him?

A. He had two wounds, small bruise wounds on the leg, one over the knee cap and one between the knee and the ankle, about midway.

Q. What was the condition of those wounds when you saw him?

A. They were open. The wound on the leg

below the knee was open discharging wound, and the wound on the knee cap was cicatrizing, a sort of a scab formed over it, they weren't severe wounds, but seemed of recent date.

MR. COAN: Cross examine.

CROSS EXAMINATION:

By MR. McCARTER:

Q. You learned, did you not, through the patient that the wounds, that the wounds were inflicted—

MR. WESCOTT: I object.

Q. One moment please. —from missles or stones thrown?

MR. WESCOTT: I object.

MR. McCARTER: I think it is competent; I think he has testified that he is an expert, and testified to some expert's question; the conversations he had with the patient are proper evidence.

THE COURT: No, I do not think so. I would overrule that offer. I will allow you to cross-examine on the condition of the patient's wound, of course.

MR. McCARTER: Well, your Honor overrules my question?

THE COURT: Yes.

MR. McCARTER: I pray an exception.

Exception allowed. Let it be sealed.

J. J. BERGEN.
Judge.

Q. They were wounds of a character that might have been inflicted by some stones or missiles hitting the limb?

A. Yes, sir.

MR. McCARTER: That is all.

MR. COAN: The State rests, if your Honor please.

Mr. Coan sums up the case for the State.

MR. McCARTER: Please note on the record that counsel for the defence has objected to the reference by the counsel for the State to the failure of one of the defendants, O'Mara, to take the stand. And the Court has made certain—

THE COURT: Well, to take the stand in explanation of the charge that he was one of the members of this party. And to that extent the Court thinks the State was justified in arguing.

MR. McCARTER: Prays exception.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

Mr. Stricker sums up the case for the defendants.

Mr. McCarter sums up the case for the defendants.

Mr. Wescott sums up the case for the State.

Mr. Wescott, during the course of the summing up, said: "Now, one other thing, before I take my seat, I want to remark to you; one of these defendants, O'Mara, has not been on the stand.

MR. McCARTER: I make the same objection I made before, and pray an exception.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

Mr. Wescott continues summing up.

Mr. Wescott, during the course of the summing up, said: "And if it were not clear beyond all possibility of doubt that these men are anarchists in their conduct, that they are destroyers of government and order, that if their practice is continued your home will not be safe, any more than mine; if they are let go the State of New Jersey will be endangered, and its fair fame smirched forever; if I were not perfectly certain, from the indubitable facts in this case of the guilt of these men—

MR. McCARTER: I respectfully object to that statement of counsel.

THE COURT: I did not hear what it was.

MR. WESCOTT: I will withdraw it. I withdraw. I will put it this way: If the facts did not make the guilt of these men perfectly certain, the distinguished Prosecutor here, as well as myself, would join with the Judge, and the Judge would join with us in advising you to acquit these men. This is not a trifling case.

Mr. Wescott continues summing up.

DEFENDANTS' REQUEST TO CHARGE

(1)

Before the defendants, or any of them, can be convicted of any crime, the jury must be satisfied beyond a reasonable doubt of their guilt. A crim inal case differs from a civil case in this particular. There the plaintiff may succeed by a mere preponderance of the evidence, whereas in a criminal case it is the duty of the State to prove its contention beyond a reasonable doubt, and in the absence of such proof the jury must acquit.

(2)

If the jury believe that the strikers, on the morning of January 19th, were engaged in what is known as a riot, then the defendants had the right to use all reasonable means to suppress the riot and preserve peace and protect life, and if the jury believes that what occurred, so far as any of the defendants are shown to be responsible therefor, only occurred while the defendants, or such of them as are shown to have been engaged in the transaction, were protecting life or endeavoring to suppress a riot or unlawful assembly, or to disperse such a gathering, then there must be an acquittal.

(3)

There are five necessary elements of a riot: 1.—There should be three persons, at least; 2.—With a common purpose; 3.—Having at least entered upon the execution of such purpose; 4.—With intent to help one another by force, if necessary, against any person who may oppose them in the execution of their common purpose; and 5.—Displaying force or violence in such manner as to alarm at least one person of reasonable firmness and courage. If the jury believe that this situation existed near the Williams & Clark plant on the morning of the 19th, then it was the privilege

and duty of the defendants, as well as of all citizens, to use all reasonable means to suppress the same.

(4)

If the jury conclude that the situation described in the last foregoing request existed, the defendants not only had the privilege and duty to suppress the same, but they were also justified in carrying arms in the performance of such duty.

(5)

It was not the duty of the defendants to remain behind the fence of the Williams & Clark plant if a riot or disorderly and tumultuous crowd were assembled and violating the law, threatening property and life. It was their duty to undertake to suppress the same and to prevent the further prosecution of these unlawful acts, and in so doing they were justified in leaving the plant and approaching and endeavoring to disperse the crowd, and to use all necessary force requisite to effect that end.

(6)

Under the circumstances of this case the mere fact that some or any of the defendants appear to have been armed, does not justify any inference against them. Before the jury can reach any conclusion hostile to the defendants on account thereof, they must be satisfied beyond a reasonable doubt that the defendants used such arms in an unreasonable manner, with provocation, and without any necessity for the protection of themselves or the lives and property of others.

(7)

In order to convict the defendants, or any one of them, the jury must be convinced beyond a reasonable doubt of their guilt, not only on the whole phase of the case, but if there is such a doubt in existence on any material feature of this

case, then such doubt must be resolved in favor of the defendant or defendants.

(8)

It is the duty of the sheriff under the law of this State, after being served with notice by owners of property, of apprehension on their part of imminent destruction or intended destruction of their property, to take all legal means to protect such property, and to that end he is justified in calling to his aid guards or assistants, and such persons when so called become entitled to exercise the right of the sheriff in undertaking by all lawful means to preserve property and protect life threatened to be injured or destroyed.

(9)

The mere fact, if it be a fact, that the Williams & Clark Company have agreed to reimburse the county of Middlesex for the expenses of the proper protection of its property by the sheriff and his assistants, makes no difference in the determination of this issue.

(10)

The sheriff is the judge and the sole judge of the necessity of summoning to his aid assistants for the purpose of preserving life or property and the preservation of peace. In answer to such summons for assistants the persons summoned have the right to bring and carry arms in the prosecution of their duty.

(11)

The sheriff and his assistants thus assembled are a lawful assemblage in the absence of positive proof beyond a reasonable doubt that they conspired and combined to do some unlawful act inconsistent with or outside the scope of their duties.

(12)

The mere fact that the sheriff was not present and participating in the acts complained of in

no way detracts from the right of the defendants, as his assistants, to perform their lawful duty.

(13)

Evidence that one or any of the defendants acted illegally or maliciously is not proof that such of the others as participated were guilty of such illegality or maliciousness.

(14)

In order to convict any of the defendants other than those, if any, that the jury are satisfied actually shot the deceased, it is necessary to show beyond a reasonable doubt that all of such defendants had combined to perform an illegal act, and that such shooting was the result of such combination or agreement, and further, beyond a reasonable doubt, that at the time of the killing of the deceased such defendants were acting in concert.

(15)

Mere proof of presence at the scene of a killing, without proof of aiding, advising or abetting the killing, does not warrant conviction.

(16)

There is ample evidence in this case to warrant the jury in concluding that the strikers, on the morning of the 19th, before the shooting, were assembled and engaged in an unlawful act, and were guilty of such conduct as justified suppression.

(17)

If the jury find that the prisoners, or any of them, had reason to believe that the strikers were about to assault them, and that they were in danger of loss of life, or of grievous bodily harm, or of being overpowered, then they had the right to defend themselves by the use of force sufficient to repel the assault.

(18)

If the jury find that the prisoners, or any of

them, had reason to believe that the strikers were about to assault them, and that they were in danger of loss of life, or of grievous bodily harm, or of being overpowered, then they had the right to defend themselves by the use of force sufficient to repel the assault, even if this results in the taking of life.

(19)

If the jury find that the prisoners, or any of them, honestly believed that they were in danger of being assaulted by the strikers, and of suffering loss of life, or of grievous bodily harm, or of being overpowered, then they had the right to use force sufficient to repel the assault, and they cannot be found guilty of any offence under this indictment even if the jury find that this belief was unfounded.

(20)

The evidence, if believed, established the fact that at the time the decedent was killed, the prisoners were acting as the assistants of the sheriff. As such they had the right to use all necessary force, even to the taking of life, to disperse the assembly of strikers.

(21)

In order to convict in this case the jury must be satisfied beyond a reasonable doubt: (a) that one of the defendants fired the shot that killed the deceased; (b) that he did it wilfully and maliciously, intending to kill, or else in the prosecution of an unlawful purpose; and (c) that the deceased was killed by such person.

(22)

There can be no conviction against any of the defendants not shown by the State beyond a reasonable doubt either to have actually fired the shot that killed the deceased, or else that they were acting in concert with the person who did so shoot, and that the shooting was done with an

unlawful purpose and not for the preservation of life or property.

(23)

If any of the defendants knowingly and maliciously continued the firing after the necessity therefor had ceased, and did by such firing kill the deceased, he may be found guilty, but to convict any such one the jury must be satisfied beyond a reasonable doubt: (a) that some person did so, and be able to identify the person; (b) that he did it wilfully and maliciously, intending to kill, or while engaged in an unlawful act; and (c) that the deceased was killed by such person.

(24)

The defendants, as assistants to the sheriff, are free from the presumption of concert or combination which exists in the case of a mob or riotous assemble, and the mere proof, therefore, that the men walked together is not evidence of such concert as will hold an unidentified defendant responsible for the act of him who actually fired the fatal shot.

(25)

The jury must remember that the evidence discloses that there were more deputies on the scene than the defendants on trial, and in dealing with this case they must be satisfied beyond a reasonable doubt that the fatal shot was fired by some of these defendants, and not the other deputies.

(26)

Should the jury decide that company of deputies which left the Williams & Clark did so lawfully, and that one of the company killed the deceased without any particular abetment of the defendants on trial for this homicide, they are not all guilty that were of the entire company, but only the one or ones who fired the fatal shot or actually abetted them to do it.

NEW JERSEY SUPREME COURT

Middlesex County Circuit

State of New Jersey vs. Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, John C. Smith, Harry Tone, John O'Mara, James Bavier, John C. Moran, William McLaughlin.	On Indictment for Homicide

Charge to the jury by Hon. James J. Bergen, Justice of the Supreme Court, as follows:

Gentlemen of the jury:

We are about at the close of a very long and interesting, and very important case. It is very important to these defendants, because the crime with which they are charged is a serious one, and if they are not guilty they ought to be acquitted. It is very important to the State, because if these defendants are guilty of an infraction of the law, then they ought to be punished.

In the beginning I wish to say to you that you are the final arbiters of the facts. It is my duty to analyze the facts, and I have the privilege of expressing my opinion as to the probable inferences to be drawn from them, but that has no binding force on the jury. You are to settle the facts as you find them from the testimony delivered in court. On the other hand, the rules of law which I lay down for your guidance, those you are bound to accept as conclusive, because if I make an error in stating any rule of law, the defendants have their remedy on an appeal, and any error that I make can, and will undoubtedly, be corrected. But if the jury undertake to ad-

minister the law according to their notions, and without accepting the rules of law which the Court lay down, whatever wrong you may do is beyond remedy. So please bear in mind those two principles: The law you are to take from the Court; you are not responsible for that; the facts you are to settle of your own motion, irrespective of any analysis I may make of them to you. I may refer to some facts in the hope that they may help you, but nothing I say is binding upon you, so far as the facts are concerned, and if I omit anything, or misstate anything, that the jury must correct.

The charge laid against these defendants is that of murder in that the life of one Alesandro Tessitore, I think the name is, you will find it in the indictment, was taken on the nineteenth day of January last. In other words, he was wounded on that day, and as I understand the evidence, died the following day. If I am wrong about that, you will correct me. The State must show the death, of course, of this man, and the cause. You have heard the evidence on that subject, and you have heard the testimony of the doctor describing the wound, and that the wound was a fatal one, so that so far as I can see from this evidence you would be justified in finding that the deceased came to his death by a pistol wound received on the nineteenth day of January last, at Roosevelt, although he died at the hospital in Union county; that makes no difference. The death blow, if any, was struck in this county. When you have determined that fact, then you must next determine who is responsible for it; that is, whether these defendants are responsible. And on that subject, gentlemen, I charge you as the law that if you find that this deceased was killed by a body of men, of which these defendants were a part, who went out from that factory gate with a purpose

to commit an unlawful act, and with the purpose of standing together and aiding and abetting one another in the carrying out of that act, and this man was killed by some one of the party when they were all there assisting in the carrying out of this purpose, they are all criminally liable, and it does not make any difference whether the shot was fired by one of these defendants, or some other member of that same party with whom you may find they were joined. You see otherwise it would be very difficult to enforce the law. If a body of men could gather together, of sufficient size to prevent the identity of the person who committed the act, and by arrangement some one of the party was to shoot and kill a man, and unless you could identify the person who fired the shot, you never could convict anybody of that crime. So, as I have said, if they started out together with a purpose among themselves to do an unlawful act, to stand by and abet one another in carrying it out, and in carrying out that unlawful purpose, some man was killed, all are equally liable. You may also take into consideration the manner in which they gathered together, all surrounding circumstances, because it is not necessary to prove an oral combination, or a written agreement to do this thing. The jury may find the common purpose of carrying out this unlawful act, with the intention to stand by and aid one another in doing it, from what they do.

What are the facts in this case, as the State claims? I will take up the defendants' case later. What the State says is this: That here was a body of men who had been gathered together to defend the factory property; that they were sworn in by the sheriff. That this morning a large part of that body gathered together, went out of this factory and next over towards this railroad where these strikers were engaged in stopping this train.

It is for you to say from that, and such other evidence as you may recall, whether these men that we have called during this trial deputies did go out together, by a common agreement to do an unlawful act, with the intention of standing by and supporting one another. That is a question of fact for the jury to settle, and if you find that to be so, and that some one of that party fired this shot which killed this man, they are all equally liable, even if it is impossible to identify the man who actually fired the shot.

Under this indictment you can find these defendants guilty, if you find them guilty, either of murder of the first degree, murder of the second degree or of manslaughter. Murder of the first degree is where a life is taken unlawfully, without justification, as the result of a preconceived notion or determination to take life, and a subsequent premeditation and determination of whether to carry out that purpose, and after that, a deliberate act to carry out that previously fixed purpose. I may say right here, expressing my own opinion, not to control you, that I fail to see in this case any evidence which would warrant a verdict of murder of the first degree, because, as I view this evidence, it appears to lack premeditation and deliberation. This is not to control you. I am only expressing my opinion.

Murder of the second degree is the unlawful taking of a human life, in commission of some unlawful act, or with an intent to do a serious bodily injury, the consequences of which would be bloodshed.

Manslaughter is an act done in the excitement of passion. It must appear that the killing resulted from passion, or heat of blood, produced by reasonable provocation. It is not every provocation that will reduce a killing from murder to manslaughter. The provocation must be of such

a character, and so close upon the act of killing, that for the moment the person would be considered as not master of his own understanding. The provocation must be reasonable, whether sufficient time elapsed between the provocation given, and the act of killing, for the accused to subdue or control passions, are questions of fact to be determined by the jury. So under this indictment, as I said at the outset, you may find the defendants guilty, if you find them guilty at all, of murder of the first degree, murder of the second degree, or manslaughter. And in declaring your verdict, the law requires that you shall state whether it is murder of the first degree, or murder of the second degree. Of course, if you find them guilty of manslaughter, you would say manslaughter.

It appears, so far as I can judge from this evidence, that on the nineteenth day of January a body of men who had quit work, and who have been denominated as strikers in this cause, and I suppose properly so, gathered about the railroad station at what is called the Williams and Clark station, and stopped a train; they stopped a train some distance above the station; the body of men was quite large, three or four hundred of them; and apparently for the purpose of ascertaining whether there were any persons that they call strike breakers, that is, persons who were going to this factory to take the places which they had left, and finding none, the train was allowed to proceed. That was an unlawful act on the part of the strikers, and the law makes that punishable; these men who did that thing can be indicted, there is a special statute with reference to stopping train; but that fact, or those facts standing alone, was no justification for taking a man's life. If that was an unlawful assembly, the sheriff of the county had a right to go there and have the

assembly disperse, and to take such necessary steps as the situation required. But before he can shoot into a crowd like that and take life, he must try some other less drastic and more peaceable method.

The law of New Jersey authorizes the sheriff, when there is an unlawful assembly, to read what we call the "riot act," and then if, after an hour, these people do not disperse, the sheriff is justified in arresting every one of them as law breakers, and if they resist the sheriff in making that arrest, and they are killed, the sheriff is not liable. But I do not understand that it is pretended in this case that the sheriff did any such thing. That is the claim of the State practically and shortly stated. That is, that while these men were there doing an unlawful thing, that is, the gathering together in an unlawful assemblage, these persons they call the deputies came out from the factory and fired on them and dispersed them.

Nor has the sheriff any right to swear in what he calls deputies. Under the law of New Jersey the sheriff has a right to appoint an under sheriff. That man takes an oath, and he gives a bond, and is authorized to act for the sheriff. But there is no statute in this state which permits the sheriff to pick out a number of men and swear them in as deputies, and turn them loose to act for him in criminal matters in his absence. The sheriff has a right to call to his assistance men, citizens of the county, and they need not be sworn in. That is a mere empty form, the swearing in of these men was of no consequence. It did not do any harm, but it did not confer any power on these men. What I understand is that these men were employed, by whom does not very clearly appear, the sheriff has not been called as a witness to give us any light on that subject, or to testify as to whether he appointed these men deputies,

or whether he gave them any authority to act for him. All we have in this case is the testimony of these defendants, that is, so far as I recall, that they were sworn in as deputies. But you may assume, I think, for the purpose of this case, that while these men were not deputies, endowed with any power to exercise the office of sheriff, that they were there as the sheriff's assistants, that is, if the sheriff had been there and has led these men out, or directed them to suppress a riot, or an unlawful assemblage, they would be what is ordinarily called the sheriff's assistants. But I fail to see in this evidence anything from which you can infer that the sheriff of this county employed those men and authorized them to do what they did do. So far as I can see, or recall from this evidence, these men were simply employed to protect that factory, and employed from some agency in Newark, at, perhaps, the request of the sheriff, or at least, with his consent. But that calling in men and appointing assistants to protect a piece of property is a very different thing from turning a body of men loose to go about the county suppressing what they may think unlawful assemblages. If I am mistaken about this evidence, of course, you will correct me, but that is the way it strikes me.

These defendants say, they have all been sworn except one, that they went out singly, that is, some of them; two or three say they did not go out, although they were all identified as being in this crowd by this boy Edward Conlan. They all admit, however, that they were employed in this factory as what they call deputy sheriffs. Each one does not appear to be able to tell who was with him, who made up that party. It may be that in one or two cases they mentioned some person. Isn't that rather a strange circumstance, if these men are here telling the truth, that they

could be in this factory with this body of men, sworn in as they thought to be deputies, being on guard duty, and eating together for two weeks, and when they went out there, that body of men, they do not recognize or now recall any person that was with them, except that they themselves were there. You must take that into consideration in determining who you are going to credit, because there is some difference in this testimony All these deputies who went out, so far as I recall, claim to have gone out singly. I do not think any of them admit that there was any body together going out, but Bavier says he went over by himself to the railroad station to bring somebody else in, and some other man was somewhere, and he was shot at, and they tell different stories, you recollect that. I want to call your attention, on that question of how they went out, because it is quite important whether they went out in a body or not, to the testimony of a man by the name of Deacon, who was called for the defendants. He was on the train, and said substantially, the deputies were rounding the scale when the train stopped; several shots were fired in quick succession; his eyes were on the body of men from the factory; these shots did not come from them; do not know where the shots came from. The men from the factory fired a volley, a concerted action. Is that consistent with the story of these defendants? I do not need to repeat it. You have heard how they went out singly, and without knowing who was with them. Another witness called for the defence was Francis R. Pyne. He heard shooting from the front part of the train; the deputies fired into the air and ground, and then charged, and the strikers ran away. What conclusion are you to reach from all this evidence upon the bare fact of whether these men went out from that factory in a body,

or whether they went out, as these defendants say they did, singly? Because if they went out in a body, armed, that is a circumstance from which you may infer that they were acting together in concert, with the intention to aid and abet each other. Some of these defendants say that they were not out there. That amounts, if you believe it, to an alibi.

Before I refer to that, however, I wish to call your attention to the matter of identification. This boy Conlan testified, as I recall it, that he came from the post office, he had been there, and when he was about a block and a half away he saw this body of men going out, and that he having been around the factory for two weeks as a boy, among these men, he knew some of them, and he recognized which of these men were going out, which of these men did go out with this body, and he pointed out all of the men here, all of these defendants on trial, except one, and that is Mr. Smith. And right here, before I may overlook it, as to Mr. Smith, of course, you will render a verdict, in any event, of not guilty, because there is no proof at all to connect him with this party that went out.

An alibi is not an affirmative defence with the burden of proof resting upon the accused to establish. But it is in the nature of the traverse of a fact that it is incumbent upon the State to establish, namely, the presence of the accused at the time and place of the crime. The assertion of an alibi in no wise changes the presumption of innocence or relieves the State of its burden of proving the guilt of the defendant beyond a reasonable doubt. The burden of proving such guilt always remains on the state, and never shifts. In other words, if the evidence of this alibi is not sufficient to quite satisfy you of its truth, if, nevertheless, it raises in your mind a reasonable doubt

of the defendant's guilt, either of that, or because of that, and the other evidence in the case, such defendant would be entitled to the benefit of that doubt.

And so the innocence of every defendant is presumed to exist. All these defendants are presumed to be innocent until the State has overthrown that presumption beyond a reasonable doubt. And that reasonable doubt, if it exists as to the grade of the crime, the defendants are entitled to the benefit of that. But a reasonable doubt is not a mere captious doubt that might arise in the mind of an unreasonable man. It is such a condition of mind that, after taking all the evidence, considering it carefully, giving every part of it its due weight, you still feel unconvinced of the defendant's guilt, and if you have such a reasonable doubt, then the defendant is, of course, entitled to the benefit of it.

These defendants seem to have two defences. I am not myself quite clear about it, but I shall assume that they have two defences. First, that there was an unlawful assemblage or a riotous gathering of persons out there, and they went out to suppress that, and to bring in, or protect persons who were coming in on the train. While there is such a thing as a body of citizens getting together and suppressing a riot, it is always much wiser that such body of citizens should act under the direction of some officer, the sheriff, or a constable, or some peace officer, the sheriff, or a There are times, of course, when the assembly reaches such a point of riotous conduct, and life or property is in danger, that the citizens may interfere and by force undertake to suppress a riot; but that condition must exist, and it is for you to say whether any such condition existed that morning, on the ninteenth day of January, as would justify the firing of a volley into that crowd, if it

was done. That is what the State claims, and some of the defendants' witnesses say that this body of men fired a volley toward this crowd of men who were on the track. It is for you to say whether any such condition existed as justified such a resort to force as to take human life. And if not, then I cannot see how you can escape finding, from this evidence, these defendants guilty of reckless shooting.

There is another defence, and that is self defence. Some of these defendants say they went out to bring in some of the persons who were coming on that train, and they were fired upon, and did shoot in order to defend themselves. You have heard their own stories of the danger they were in there, and it is for you to say whether, under the rules of law which I shall give you in a moment, they were in any such position as justified the taking of human life. The burden of proof is on the accused to show facts and circumstances necessary to establish the defence of self defence. A man may protect himself, even to the extent of taking the life of his adversary, when that act is, or reasonably appears to be necssary to preserve his own life, or to protect himself from a serious bodily harm. Whether the necessity for taking a life exists in a given case, must be determined from the situation of the accused at the time, and that is a jury question. The accused cannot make his own judgment of the necessity of slaying the deceased his justification, and whether his situation was such as to warrant resort to such means to protect himself from a danger actual or apprehhended on reasonable grounds, and whether before the fatal wound was given the accused had done everything exacted by the law to avoid taking life, involves the determination of questions of fact.

So you see it is very largely a jury question. It

is for you to say whether, if these defendants did shoot into that crowd, and did take life, it was in self defence; whether self defence was a justification under all the conditions shown by the testimony to be present at that time. That: I think, is about all that is necessary for me to say to you. It is very largely a question of fact. It is an important case, which I trust this jury will consider carefully and conscientiously and arrive at a just result, and when you reach that result, and when you are satisfied that you have correctly determined the case, I also trust, and I have no doubt you will have the courage to declare that result, whatever it may be.

I have some requests to charge:

1, 2, 3, 4 and 5 I refuse, except as I have charged.

6. "Under the circumstances of this case the mere fact that some or any of the defendants appear to have been armed, does not justify any inference against them. Before the jury can reach any conclusion hostile to the defendants on account thereof, they must be satisfied beyond a reasonable doubt that the defendants used such arms in an unreasonable manner, without provocation, and without any necessity for the protection of themselves or the lives and property of others." That I charge.

7. I refuse except as charged.

8. "It is the duty of the sheriff under the law of this State, after being served with notice by owners of property, of apprehension on their part of imminent destruction or intended destruction of their property, to take all legal means to protect such property, and to that end he is justified in calling to his aid guards or assistants, and such persons when so called become entitled to exercise the right of the sheriff in undertaking by all lawful

means to preserve property and protect life threatened to be injured or destroyed." That I charge, except that such persons are not entitled to exercise the right of the sheriff in all undertakings, without some directions or instructions from him.

9. "The mere fact, if it be a fact, that the Williams and Clark Company have agreed to reimburse the county of Middlesex for the expenses of the proper protection of its property by the sheriff and his assistants, makes no difference in the determination of this issue." That I charge.

10. "The sheriff is the judge and the sole judge of the necessity of summoning to his aid assistants for the purpose of preserving life or property and the preservation of peace. In answer to such summons for assistants the persons summoned have the right to bring and carry arms in the prosecution of their duty." That I charge.

11. "The sheriff and his assistants thus assembled are a lawful assemblage in the absence of positive proof beyond a reasonable doubt that they conspired and combined to do some unlawful act inconsistent with or outside the scope of their duties." That I charge.

12. and 13. I refuse, except as I have charged.

14. "In order to convict any of the defendants other than those, if any, that the jury are satisfied actually shot the deceased, it is necessary to show beyond a reasonable doubt that all of such defendants had combined to perform an illegal act, and that such shooting was the result of such combination or agreement, and further, beyond a reasonable doubt, that at the time of the killing of the deceased such defendants were acting in concert." That I do charge.

15. "Mere proof of presence at the scene of a killing, without proof of aiding, advising or abetting the killing, does not warrant conviction." That I charge.

16. I refuse.

17. I refuse except as I have charged.

18, 19, 20 and 21 I refuse to charge, except as I have charged.

22. "There can be no conviction against any of the defendants not shown by the State beyond a reasonable doubt either to have actually fired the shot that killed the deceased, or else that they were acting in concert with the person who did so shoot, and that the shooting was done with an unlawful purpose and not for the preservation of life or property."

THE COURT: Do you mean that, Mr. Stricker?

MR. McCARTER: Just as requested.

THE COURT: "And that the shooting was done with an unlawful purpose and not for the preservation of life and property"?

MR. McCARTER: No, sir.

THE COURT: Do you want that "not" out or in?

MR. McCARTER: Out.

THE COURT: Strike out the word "not." With that word out, I charge it as requested.

23. I refuse to charge, except as I have charged.

24 and 25 I refuse to charge, except as I have charged.

26. "Should the jury decide that company of deputies which left the Williams and Clark did so lawfully, and that one of the company killed the deceased without any particular abetment of the defendants, on trial for this homicide, they are not all guilty, that were

of the entire company, but only the one or ones who fired the fatal shot, or actually abetted them to do it." That I will charge, except you use the word "deputies."

MR. STRICKER: The defendants.

THE COURT: I will use the word "assistants," rather than deputies. With that change I charge it.

MR. STRICKER: May I ask your Honor to read that last request again. In giving the "one or ones," there was a little interruption there in asking me to explain my handwriting, which is rather poor.

(Request read by stenographer.)

THE COURT: With the consent of counsel I am going to give this jury a list of the names of these defendants on trial, because this indictment has the names of all these defendants, and I have written here, "John Smith, verdict of not guilty directed." You do not object to that, do you?

MR. McCARTER: Oh, no, sir.

THE COURT: The list of nine of the defendants are on this paper, and the name of John Smith is below. There are other names in the indictment.

MR. McCARTER: I respectfully pray a general exception to the whole charge.

THE COURT: Yes.

Exception allowed—sealed accordingly.

J. J. BERGEN,

Judge.

MR. McCARTER: We wish to except respect-

fully to the refusal of the Judge to charge the requests such as he did not charge, in the form in which they were requested. Or with the modifications that were made.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to that portion of the charge which commences: "These facts alone are not enough, before he can shoot he must show that he could have dispersed the crowd or rioters by less drastic means," or whatever the Court said there.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to that portion of the Court's charge which intimated or suggested that it was necessary under the circumstances for the riot act to have been read, or whatever the Court said about that.

Exception allowed—sealed accordingly,

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to so much of the charge, or that portion of the charge which seemed to confine the right of the sheriff to summon to his aid citizens of the county, or whatever the language was there.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to so much of the charge as suggested that the employment of the defendants as agents did not authorize the men to do what they did do, turn them loose to do as they did do, or whatever the Court's language was there.

Exception allowed—sealed accordingly,

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to that portion of the charge adverting to the failure of the defendants to be able to recognize, or say who was with them, adverts to the fact that they ate together, as a reason why they should have so remembered.

Exception allowed—sealed accordingly,

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to that portion of the charge which referred to the evidence of Deacon and Pyne, as to the deputies coming out in a body, as indicative of the fact that the claim that those of the defendants who went out singly was perhaps untrue. Our contention being that there might have been a body have gone out of the thirty or forty men—

THE COURT: You do not want that in there. That is your argument. Just take your exception.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. McCARTER: We also respectfully except to that portion of the Court's charge—

THE COURT: Does not the general exception to the charge cover all this?

MR. McCARTER: I really do not know.

THE COURT: I think you want a general exception, and all you have got to do is file your specifications.

MR. STRICKER: We usually do both.

THE COURT: All right then.

MR. McCARTER: We also respectfully except to that portion of the charge which said: "That if the facts and circumstances which in the opinion of the jury would determine whether or not the condition existed, justifying them to go out, and if necessary shoot, if they concluded that that necessity did not exist, then they must find all these defendants guilty."

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. STRICKER: We also wish to except to that portion of the charge wherein your Honor says: "It is also much wiser that a number of citizens should be headed by some officers."

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. STRICKER: We also wish to except to that portion of your Honor's charge where you say: "I do not see how you can escape finding the defendants guilty," and the language that follows it.

THE COURT: If I said that.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. STRICKER: We also wish to except to that portion of your Honor's charge in which you say the burden of proof is on the accused, where he sets up the defence of self-defence."

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. STRICKER: We also wish to except to that portion of your Honor's charge, I think it is covered by Mr. McCarter, but I want to make certain of it, "If these defendants did not organize into a squad, they undoubtedly would have known each other, and the language which follows that.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

THE COURT: Any exception you may have.

MR. STRICKER: Then we pray a general exception.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

MR. STRICKER: I pray an exception to your Honor's charge wherein you said that the sheriff had no authority to appoint or swear in these deputies.

Exception allowed—sealed accordingly.

J. J. BERGEN,
Judge.

I hereby certify that the foregoing contains the entire record of the proceedings at the trial of the indictment between the State of New Jersey and James Bavier, Fred Mullen, John C. Moran, Robert J. Wallace, John O'Mara, Frank Rick, Harry Tone, William McLaughlin and James Williams.

J. J. BERGEN,
Justice Supreme Court.

NEW JERSEY COURT OF ERRORS AND APPEALS

The State of New Jersey

Defendant in Error

vs.

James Bavier et. als.

Plaintiff in Error

Assignments of Error

Service acknowledged this 29th day of June, 1915.

JOHN W. WESCOTT,

Attorney General.

Filed June 29th, 1915.

THOMAS F. MARTIN,

Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

The State of New Jersey, Defendant in Error, vs. James Bavier, et als, Plaintiffs in Error.	On error to the New Jersey Supreme Court

ASSIGNMENT OF ERRORS.

And now on this 29th day of June, Nineteen hundred and fifteen, before the New Jersey Court of Errors and Appeals, comes the said James Bavier, Robert J. Wallace, James D. Williams, Frank Rick, Fred Mullen, Harry Tone, John O'Mara, John C. Moran and William McLaughlin, plaintiffs in error, by Joseph E. Stricker, their attorney, and say that in the record and proceedings and also in the giving of judgment upon the said indictment against them in the New Jersey Supreme Court, and in the bill of exceptions taken upon said trial, there is manifest error in this:

First. That the Court refused to permit the defendants to have a juror sworn for the purpose of enabling the defendants to obtain information in order to lay a foundation for a challenge, to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Second.—That the Court refused to permit the defendants to have a juror sworn for the purpose of enabling the defendants to ascertain whether or not said juror was interested in trade union, to which refusal due and timely exception was taken

by the plaintiffs in error (pro ut the bill of exceptions).

Third. That the Court overruled the challenge to juror Lewis P. Fuhrman, on the ground that the talesman was a person likely to be interested in the labor union to an extent which might bias him from rendering a verdict according to the evidence in the case, to which due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Fourth. That the Court overruled the challenge to Juror Albert Wooley, who was challenged to the favor and request made that the juror be sworn for the purpose of eliciting information as to whether or not he possessed any bias which would prevent him from rendering an impartial verdict according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exception).

Fifth. That the Court overruled the challenge to juror Edgar S. Crider, who was challenged to the favor and request made that the juror be sworn for the purpose of eliciting information as to whether or not he possessed any bias which would prevent him from rendering an impartial verdict according to the evidence, to which ruling due and time exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Sixth. That the Court overruled the challenge to juror Harry Bentley, who was challenged to the favor and request made that the juror be sworn for the purpose of eliciting information as to whether or not he possessed any bias which would prevent him from rendering an impartial verdict according to the evidence, and that this information was sought for the purpose of laying grounds for peremptory challenge, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Seventh. That the Court overruled the challenge to juror William H. Holcomb, who was challenged to the favor and request made that the juror be sworn for the purpose of eliciting information as to whether or not he possessed any bias which would prevent him from rendering an impartial verdict according to the evidence, and that this information is sought for the purpose of laying grounds for peremptory challenge, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Eighth. That the Court overruled the challenge to juror Albert H. Bradshaw who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Ninth. That the Court overruled the challenge to juror John B. Green who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Tenth. That the Court overruled the challenge to juror John F. Hartman who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Eleventh. That the Court overruled the challenge to juror Charles Blauth, who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twelfth. That the Court overruled the challenge to juror Simeon Middeleton who was challenged to the favor and request made for permission to elicit information as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Thirteenth. That the Court overruled the challenge to juror Alexander L. Berrien who was challenged to the favor and request made for permission to elicit information as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fourteenth. That the Court overruled the challenge to juror Joseph A. Nichelson who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifteenth. The Court overruled the challenge to juror George Koenig who was challenged to the

favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Sixteenth. That the Court overruled the challenge to juror Thomas B. Steele who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Seventeenth. That the Court overruled the challenge to juror Elwell S. Clugston who was challenged to the favor and request made for permission to elicit information from the juror as to whether or not his commercial associations were such as would prevent him from rendering a verdict in the case according to the evidence, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Eighteenth. That the Court permitted the witness James E. Roach to answer the question "yes, but in reference to the time you told the patient that he could not recover?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Nineteenth. That the Court permitted the witness James E. Roache to answer the question "Was there anything said to the patient just at the time that this was written?," to which permission due and timely exception was taken by

the plaintiffs in error (pro ut the bill of exceptions).

Twentieth. That the Court permitted the witness Fred Vail to answer the question "How many of those men did you see with revolvers, Mr. Vail?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Twenty-first. That the Court permitted the witness Alexander Pokol to answer the question "Did you see the Italian man who was shot and died there?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twenty-second. That the Court permitted the witness Alexander Pokol to answer the question "Where were the men who were shot taken?"; to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twenty-third. That the Court permitted the witness James F. Ryder to answer the question "What did he shoot with?", to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Twenty-fourth. That the Court refused to permit the witness Andrew Gancsucs to answer the question "And you were at a meeting in Van Ness Hall the night before were you not?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Twenty-fifth. That the Court permitted the witness Paul Martens to answer the question "Do you know whether or not any of the men who came from the plant crossed the track?", to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twenty sixth. That the Court refused to permit the witness Andrew Ganesues to answer the question "You have a suit pending against the American Agricultural Chemical Company now haven't you?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twenty seventh. That the Court refused to permit the witness Paul Babik to answer the question "Had your life been threatened if you went to work in that plant?", to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twenty eighth. That the Court permitted the witness Joseph Buckley to answer the question "Did he say anything to you in the course of your conversation on that occasion about his realizing that he was done with this world, or anything of that sort?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Twenty ninth. That the Court admitted as evidence the alleged dying declaration of Alessandro Tessitore, marked Exhibit P.-13, to which admission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirtieth. That the Court permitted the witness "C. Poth to answer the question "Who threw everybody into the water?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty first. That the Court permitted the witness C. Poth to answer the question "What happened then?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty second. That the Court permitted the witness Edward Conlon to answer the question

"How long before the 19th of January was it about that these men came there?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty third. That the Court permitted the witness Edward Conlon to answer the question "No, I know you can't give us the number. Did you see more than one gun?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty-fourth. That the Court permitted the witness Edward Conlon to answer the question "Give us the name of one of them that you can recollect?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty fifth. That the Court permitted the witness Willard B. Keller to answer the question "I didn't ask you whether they were there that morning. Just look at the whole ten of them and tell me whether they are the deputies who were there at the works?" to which permission due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions.)

Thirty sixth. That the Court permitted the witness Willard B. Keller to answer the question "Do you know Mr. Smith, the one sitting there?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty seventh. That the Court permitted the witness Willard B. Keller to answer the question "Where were they kept?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Thirty eighth. That the Court permitted the witness Willard B. Keller to answer the question "Where was the ammunition kept?" to which per-

mission due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions).

Thirty ninth. That the Court permitted the witness John J. Donovan to answer the question "How many shells were there about?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Fortieth. That the Court refused to permit the witness John J. Donovan to answer the question "Hadn't one of the Agricultural plants been stormed and forced in your presence?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Forty first. That the Court refused to permit the witness John J. Donovan to answer the question "What was he doing with that revolver when you saw him?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Forty second That the Court refused to permit the witness John J. Donovan to answer the question "Were you present at the plant known as the Liebig plant on the day when about 150 strikers opened and got by you and another officer?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Forty third. That the Court refused to permit the witness John J. Donovan to answer the question "On the 19th day of January or two or three weeks previous?" in which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Forty fourth. That the Court refused to strike out the answer of the witness John J. Dowling "No sir, I think there was about 30" to which re-

fusal due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions).

Forty fifth. That the Court permitted the witness John J. Dowling to answer the question "After the deputies ran to the factory, what did you do?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exception).

Forty sixth. That the Court refused to permit the witness John J. Dowling to answer the question "Did you think it was proper for you to permit a large number of men, known to you to be strikers to go down towards this private property that you speak of, without making any effort to prevent them?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Forty seventh. That the Court permitted the witness Mike Cerepan to answer the question "Did you see any deputies after that?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Forty eighth. That the Court denied the motion of the defendants "That if Harry Patterson who is indicted and not now under trial, be used as a witness by the State that a verdict of a judgment of acquittal against the charge against him should be entered" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Forty Ninth. That the Court permitted the witness Julius Jaeger to answer the question "Was it one of the deputies fired at the group?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions).

Fiftieth. That the Court denied the motion of the plaintiffs in error to acquit all of the defen-

dants except Williams, Mullen, Bavier and O'Mara, to which denial due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty first. That the Court refused to permit the witness J. Ernest Waring to answer the question "Now Mr. Waring, follow the rulings of this Court, I will not ask you the question with regard to what transpired anterior to the appointment by the County of the persons of the deputies. Will you tell us what troubles you experienced at your Liebig plant the day before the 19th?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty second. That the Court overruled an offer by the plaintiffs in error to prove by the witness J. Ernest Waring the disturbances that transpired between January 4th, 1915 and January 19th, 1915 in the vicinity of the Liebig and Williams & Clark plants, to which ruling due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty third. That the Court refused to permit the witness Robert B. Moore to answer the question "What was it?" to which refusal due and timely exception was taken by the plaintiff's in error (pro ut the bill of exceptions.)

Fifty fourth. That the Court refused to permit the witness James M. Farley to answer the question "Don't answer this question. On the 18th did you see any of the strikers fire at the deputies?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty fifth. That the Court refused to permit the witness James M. Farley to answer the question "I will ask another question which you must not answer, Mr. Farley, until the Court rules on it.

Did you have any trouble coming into the plant on the 18th, and when the 7 o'clock train came in on the 18th, the day before the occurrence, immediately before this Court, did you know whether any men who arrived on the train at 7 and 8 o'clock were fired upon by strikers?'' to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty sixth. That the Court refused to permit the witness James Bavier to answer the question ''Did he say anything to you?'' to which refusal due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions.)

Fifty seventh. That the Court refused to permit the witness James Bavier to answer the question ''How long before the 19th had a crowd congregated, if at all, in and about that station?'' to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty eight. That the Court permitted the witness James Bavier to answer the question ''How many over a dozen?'' to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Fifty ninth. That the Court permitted the witness James Bavier to answer the question ''How many of them were there whose names you do not know?'' to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixtieth. That the Court permitted the witness James Bavier to answer the question ''Well when did you get that ammunition?'' to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty first. That the Court permitted the witness Fred Ricks to answer the question ''Any revolvers?'' to which permission due and timely ex-

ception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty second. That the Court refused to permit the witness Charles R. Dey to answer the question "Well, do you know whether or not he was asked whether he could identify any of the persons that constituted the deputies at the Roosevelt plant, and who it was charged had killed Alessandro Tessitore, and another person?" to which refusal due and timely exception was taken by the plaintiffs in error (pro utt the bill of exceptions.)

Sixty third. That the Court refused to permit the witness Antonio De Rosa to answer the question "Well did you see him the night before?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty fourth. That the Court permitted the witness William McLaughlin to answer the question "How long after was it before you were called the second time?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty fifth. That the Court permitted the witness William McLaughlin to answer the question "What days haven't you been paid for?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty sixth. That the Court permitted the witness Robert Wallace to answer the question "Never. You remember hearing of a strike there, don't you, in the Mercer Motor Car Company?" in which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty seventh. That the Court permitted the witness Robert Wallace to answer the question

"What time of the day were you at Asher's?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty eighth. That the Court permitted the witness James B. Williams to answer the question "Who furnished you to the Sheriff?" to which permission due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Sixty ninth. That the Court refused to permit the witness Henry Carless to answer the question "State whether or not you are the attorney for those men in suits pending in the New Jersey Supreme Court, brought for damages for injuries sustained by reason of the shooting which is being tried here?" to which refusal due and timely exception was taken by the plaintiff's in error (pr ut the bill of exceptions.)

Seventieth. That the Court refused to admit the original complaint made in this case by the Chief of Police of the Borough of Roosevelt, to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Seventy first. That the Court refused to permit the witness Tony Simone to answer the question "Is that all the conversation you had with him?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the plaintiffs in error.)

Seventy second. That the Court refused to permit the witness Tony Simone to answer the question "Did you have any other conversation with him at that time?" to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Seventy third. That the Court refused to permit the witness Dr. Edgar Carroll to answer the

question "One moment please, from missiles or stones thrown?" to which refusal due and timely exception was taken by the plaintiffs in error (pr ut the bill of exceptions.)

Seventy fourth. That the Court failed to charge the request of the defendants as requested (pro ut the bill of exceptions.)

Seventy fifth. That the said Court modified the request to charge as presented by the defendants and did not charge the requests as presented (pro ut the bill of exceptions.)

Seventy sixth. That the said Court refused to charge in the from in which the Court was requested to charge certain requests of the plaintiffs in error, to which refusal due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Seventy seventh. That the Court's charge to the jury or that part thereof wherein it defines the duties of the Sheriff was improper and prejudicial to the defendants, to which portion of the charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Seventy eighth. That the Court's charge to the jury wherein it was intimated or suggested that it was necessary under the circumstances for the riot act to have been read was improper and prejudicial to the interests of the plaintiffs in error, to which portion of the charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Seventy ninth. That the Court improperly charged the jury in saying "But there is no statute in this State which permits the Sheriff to pick out a number of men and swear them in as deputies, and turn them loose to act for him in criminal matters in his absence.The Sheriff has a right to call to his assistance men citizens of the County, and they need not be sworn in. That is a mere

empty form. The swearing of these men was of no consequence. It did not do any harm, but it did not confer any power on these men," to which portion of the charge due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions.)

Eightieth. That the Court improperly charged the jury in saying "each one does not appear to be able to tell who was with him, who made up that party. It may be that in one or two cases they mentioned some person. Isn't that rather a strange circumstance, if these men are here telling the truth, that they could be in this factory with this body of men, sworn in as they thought to be deputies, being on guard duty, and eating together for two weeks, and when they went out there, that body of men, they do not recognize or now recall any person that was with them, except that they themselves were there?" to which portion of the charge due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Eighty first. That the Court improperly charged the jury in intimating to the jury that the testimony of Deacon and Pyne was in contradiction of the stories told by the Defendants, to which due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Eighty second. That the Court improperly charged the jury in saying "It is for you to say whether any such condition existed as justified such a resort to force as to take human life. And if not, then I cannot see how you can escape finding, from this evidence, these defendants guilty of reckless shooting," to which portion of the charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty third. That the Court improperly charged the jury in saying "While there is such

a thing as a body of citizens getting together and suppressing a riot, it is always much wiser that such body of citizens should act under the direction of some officer, the Sheriff, or a Constable, or some peace officer of the County," to which portion of the charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty-fourth. That the Court improperly charged the jury in saying "The burden of proof is on the accused to show facts and circumstances necessary to establish the defence of self-defense," to which portion of the charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty fifth. That the Court improperly charged the jury in saying "Because if they went out in a body, armed, that is a circumstance from which you may infer that they were acting together in concert, with the intention to aid and abet each other," to which portion of the carge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty sixth. That the Court refused to charge as requested by the defendants the following: "Before the defendants or any of them, can be convicted of any crime, the jury must be satisfied beyond a reasonable doubt of their guilt. A criminal case differs from a civil case in this particular. There the plaintiff may succeed by a mere preponderance of the evidence, where as, in a criminal case it is the duty of the State to prove its contention beyond a reasonable doubt, and in the absence of such proof, the jury must acquit," to which refusal due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty seventh. That the Court improperly refused to charge as requested by the defendants

the following: "If the jury believes that the strikers on the morning of January 19th were engaged in what is known as a riot, then the defendants had the right to use all reasonable means to suppress the riot and preserve peace and protect life, and if the jury believes that what occurred, so far as any of the defendants are shown to be responsible therefor, only occurred while the defendants, or such of them as are shown to have been engaged in the transaction, were protecting life or endeavoring to suppress a riot or unlawful assembly, or to disperse such a gathering then there must be an acquittal," to which refusal to so charge and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty-eighth. That the Court improperly refused to charge as requested by the defendents the following: "There are five necessary elements of a riot: 1. There should be three persons at least; 2. with a common purpose; 3. having at least entered upon the execution of such purpose; 4. with intent to help one another by force, if necessary, against any person who may oppose them in the execution of their common purpose; and, 5, displaying force or violence in such manner as to alarm at least one person of reasonable firmness and courage. If the jury believes that this situation existed near the Williams & Clark plant on the morning of the 19th then it was the privilege and duty of the defendants, as well as of all citizens, to use all reasonable means to suppress the same," to which refusal to so charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Eighty ninth. That the Court improperly refused to charge as requested by the defendants the following: "If the jury conclude that the situation described in the last foregoing request existed, the defendants not only had the privilege and

duty to suppress the same, but they were also justified in carrying arms in the performance of such duty," to which refusal so to charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Ninetieth: That the Court improperly refused to charge as requested by the defendants the following: "It was not the duty of the defendants to remain behind the fence of the Williams & Clark plant if a riot or disorderly and tumultuous crowd were assembled and violating the law, threatening property and life. It was their duty to undertake to suppress the same and to prevent the further prosecution of these unlawful acts, and in so doing they were justified in leaving the plant and approaching and endeavoring to disperse the crowd and use all necessary force requisite to effect that end," to which refusal to so charge due and timely exception was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Ninety first. That the Court improperly refused to charge as requested by the defendants the following: "In order to convict the defendants, or any one of them, the jury must be convinced beyond a reasonable doubt of their guilt, not only on the whole phase of the case, but if there is such a doubt in existence on any material feature of this case, then such doubt must be resolved in favor of the defendant or defendants." To which refusal to so charge due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Ninety second. That the Court improperly charged the jury in saying ("that I charge, except that such persons are not entitled to exercise the right of the sheriff in all undertakings without some direction or instructions from him" to which portion of the said charge due and timely excep-

tion was taken by the plaintiffs in error (pro ut the bill of exceptions.)

Ninety third. That the Court improperly refused to charge as requested by the defendants the following: "the mere fact that the sheriff was not present and participating in the acts complained of in no way detracts from the right of the defendants, as his assistants, to perform their lawful duty, to which refusal to so charge due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Ninety fourth. That the Court improperly refused to charge as requested by the defendants: "Evidence that one or any of the defendants acted illegally or maliciously is not proof that such of the otlrers as participated were guilty of such illegallity or maliciousness" to which refusal to so charge due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Ninety fifth. That the Court improperly refused to charge the jury as requested by the defendants the following: "There is ample evidence in this case to warrant the jury in concluding that the strikers, on the morning of the 19th, before the shooting, were assembled and engaged in an unlawful act, and were guilty of such conduct as justified suppression." To which refusal to so charge due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Ninety sixth. That the Court improperly refused to charge the jury as requested by the defendants the following: "If the jury find that the prisoners, or any of them, had reason to believe that the strikers were about to assault them, and that they were in danger in loss of life, or of grievous bodily harm, or of being overpowered, then they had the right to defend themselves by the use of force sufficient to repel the assault, even if

this results in the taking of life." To which refusal to so charge due and timely exception was taken by the plaintiffs in error, (pro ut the bill of exceptions.)

Ninety-seventh. That the Court improperly refused to charge the jury as requested by the defendants the following: "If the jury find that the prisoners, or any of them, had reason to believe that the strikers were about to assault them, and that they were in danger of loss of life, or of grievous bodily harm, or of being overpowered, then they had the right to defend themselves by the use of force sufficient to repel the assault, even if this results in the taking of life." To which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

Ninety-eighth. That the Court improperly refused to charge the jury as requested by the defendants the following: "If the jury find that the prisoners, or any of them, honestly believed that they were in danger of being assaulted by the strikers, and of suffering loss of life, or of grievous bodily harm, or of being overpowered, then they had the right to use force sufficient to repel the assault, and that cannot be found guilty of any offense under this indictment, even if the jury find that this belief was unfounded." To which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exception.)

Ninety-ninth. That the Court improperly refused to charge the jury as requested by the defendants the following: "The evidence, if believed, establishes the fact that at the time the decedant was killed, the prisoners were acting as the assistants of the sheriff. As such they had the right to use all necessary force, even to the taking of life, to disperse the assembly of strikers." To

which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

One hundredth. That the Court improperly refused to charge the jury as requested by the defendants the following: "In order to convict in this case the jury must be satisfied beyond a reasonable doubt: (a) that one of the defendants fired the shot that killed the deceased; (b) that he did it wilfully and maliciously, intending to kill, or else in the prosecution of an unlawful purpose; and (c) that the deceased was killed by such person," to which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

One hundred and one. That the Court improperly refused to charge the jury as requested by the defendants the following: "If any of the defendants knowingly and maliciously continued the firing after the necessity therefor had ceased, and did by such firing kill the deceased, he may be found guilty, but to convict any such one the jury must be satisfied beyond a reasonable doubt: (a) that some person did so, and be able to identify the person; (b) that he did it wilfully and maliciously, intending to kill or while engaged in an unlawful act; and (c) that the deceased was killed by such persons," to which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

One hundred and two. That the Court improperly refused to charge the jury as requested by the defendants the following: "The defendants, as assistants to the sheriff, are free from the presumption of concert or combination which exists in the case of a mob or riotious assemble, and the mere proof, therefor, that the men walked together is not evidence of such concert as will hold

an unidentified defendant responsible for the act of him who actually fired the fatal shot," to which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exception.)

One hundred and three. That the Court improperly refused to charge the jury as requested by the defendants the following: "The jury must remember that the evidence discloses that there were more deputies on the scene than the defendants on trial, and in dealing with this case they must be satisfied beyond a reasonable doubt that the fatal shot was fired by some of these defendants, and not the other deputies," to which refusal to so charge due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

One hundred and four. That the Court improperly and insufficiently charged the jury in many other respects, to which due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

One hundred and five. That the Court improperly permitted Mr. Coan in summing up for the State, to refer to the failure of one of the defendants, O'Mara, to take the stand, to which permission due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

One hundred and six. That the Court improperly permitted Mr. Wescott in summing up for the State, to say: "Now, one other thing, before I take my seat, I want to remark to you; one of these defendants, O'Mara, has not been on the stand," to which permission due and timely exception was taken by the plaintiffs in error. (Pro ut the bill of exceptions.)

JOSEPH E. STRICKER,

Attorney for plaintiffs in error.

EXHIBIT

AFFIDAVIT OF JACOB LEVINSON

Exh. D. 1
5-26-15.
G. D. Z.

State of New Jersey, County of Middlesex, ss:

Jacob Levison being duly sworn according to law upon his oath deposes and says. I was at the Williams & Clark plant on the morning of January 19, 1915. I simply was following the crowd. I saw some sparks and smoke coming from the direction of the plant but I could not tell who was doing the firing, and cannot tell anything about it particularly as I was about 400 feet away.

JACOB LEVESON.

Subscribed and sworn to before me
this 29th day of March, 1915.

CHARLES W. SEDAM,

Notary Public of N. J.

EXHIBIT

(Original see copy next page.)

AFFIDAVIT OF EDWARD CONLON

I identified eleven of the deputies at the County Jail. I saw those eleven deputies the day of the shooting I do not whether the deputies or the strikers did the shooting. I could not identify one of the eleven as having fired a shot. I did not hear a single shot. I heard them all at once, and I could see smoke going up in the air. I saw some of strikers with clubs, iron pipes and sticks. I do not know who fired the first shot.

EDWARD CONLON.

Subscribed and sworn to before me this 3rd day of March, 1915.

WILLARD B. KELLER,
Notary Public.

Exh. No. 2 Def.

EXHIBIT

COPY OF AFFIDAVIT OF EDWARD CONLON

Williams & Clark,
Edward Conlan

I identified eleven of the deputies at the County Jail. I saw those eleven deputies the day of the shooting. I do not whether the deputies or the strikers did the shooting. I could not identify one of the eleven as having fired a shot. I did not hear a single shot, I heard them all at once, and I could see smoke going up in the air. I saw some of strikers with clubs, iron pipes and sticks. I do not know who fired the first shot.

(Signed.) EDWARD CONLON.

Subscribed and sworn to before me
this 3rd day of March, 1915.

WILLARD B. KELLER,
Notary Public.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, Defendant in Error, vs. JAMES BAVIER ET. AL., Plaintiffs in Error.	On Error to Supreme Court.

CAUSES FOR REVERSAL ON THE WHOLE RECORD

The plaintiffs in error assign the following reasons for reversal of the verdict and judgment of conviction in the above stated cause, upon the whole record.

1. Because by an order entered April 5, 1915, signed by the Honorable James J. Bergen, justice of the Supreme Court, a severance of the indictment was upon the application of the prosecutor of the pleas of the county of Middlesex, ordered, and the plaintiffs in error were directed to be tried separately and apart from the other persons indicted with them, without any or sufficient reason having been shown therefor.

2. Because by an order of the Supreme Court entered on the 11th day of May, 1915, on the application of the attorney general, it was directed that the indictment against the plaintiffs in error should be tried before a foreign jury drawn from the county of Mercer, and that a venire should be directed to the sheriff of the county of Mercer for

the summoning of one hundred jurors from the body of the county of Mercer, to try said indictment, pursuant to which order the said indictment was tried, and the verdict rendered by a jury chosen and selected from the one hundred jurors so summoned.

3. Because the learned trial judge, against the objection of defendants' counsel, ruled that the defendants were entitled to and allowed them but five peremptory challenges collectively and not individually.

4. Because the learned trial judge refused to permit the defendants' counsel to examine the proposed jurors before they were sworn, as to their attitude upon trade unions; as to whether their commercial associations were such as would prevent them from rendering a verdict in the case according to the evidence, as indicating bias on their part, or for the purpose of laying grounds for a peremptory challenge.

5. Because the learned trial judge permitted the witness Ryder to testify (p. 316) of the shooting in the back of one of the rioters by some unknown man, the person shot not being the deceased, and the person shooting not being a defendant; also permitted the witness Richardson (p. 328) to state where certain shots that he heard seemed to come from, and to describe how a shot (p. 329) was fired by an unknown man towards a person who fell down in the act of running away from the Williams & Clark factory; also permitted the witness Ganssucs to testify (p. 345) to his having been hit and later shot at by a deputy not shown to be any of the defendants, or even anyone that was indicted; allowed the State's witness Santi (p. 442) to testify as to his having been shot in the back of his neck by some unknown and unseen person; permitted the State's witness Hepben

(p. 464) to state that while he was running away he was shot in the back by some unknown person, and the State's witness Muzika to testify (p. 486) as to his having been shot by some unknown person. Likewise permitted the State's witness Poth to testify (pp. 494, 495) that some of the men who came out of the factory threw him into the water.

6. Because the learned trial judge refused to permit the defendants' counsel to cross-examine the State's witness Ganssucs as to whether or not he was one of a number who had met on the evening previous to the shooting at a hotel and participated in the passing of a resolution to have the crowd assemble on the day in question at the point where the shooting occurred, for the purpose of committing an unlawful act; and also prevented the defendants from showing, by the testimony of De Rosa (p. 914) that at the said meeting one Frescini, a strike leader, had spoken directing that the next day the strikers should proceed to the plant and create disturbances there.

7. Because the learned trial judge refused to permit the defendants' counsel to cross-examine the State's witness Ganssucs as to whether he had a suit pending against the American Agricultural Chemical Co., as indicative of his interest as a witness in this case.

8. Because the learned trial judge (p. 461) permitted the alleged ante mortem statement of the deceased to be admitted in evidence and read.

9. Because the learned trial judge permitted the State's witness Keller to show that previous to the day in question there were guns and ammunition in the factory of Williams & Clark (pp. 606-7).

10. Because the learned trial judge refused to

permit the defendants to show the condition of things, including the existence of a strike, and the shooting into the factories for several days anterior to the day in question, and to show that the strikers were assembled at the arrival of the train, with clubs and pistols, for the purpose of intimidating the men, and that they forced an entrance into the plant, broke windows, etc.

11. Because the learned trial judge (p. 725) refused to permit the defendants to show by the witness Waring what occurred in the way of violence and disorder and attempted destruction of property, and injury to life, previous to the day in question, all of which prevailed upon him, as an officer of the American Agricultural Chemical Co. to seek protection for his plant, both from local authorities in Roosevelt and from the authorities in the county, because of the riotous character of the proceedings, and that that very same crowd were in front of his plant on the morning of the 19th of January.

12. Because the learned trial judge overruled the defendants' offer to show (p. 730) that on the day before the occurrence in question, a mob of strikers broke into one of the plants of the American Agricultural Chemical Co., created great disorder, broke glasses and shot at a man who was connected with the plant.

13. Because the learned trial judge overruled the offer of the defendants' counsel to prove (p. 731) that after the arrival of the deputies on the 4th of January, and during all the intermediate period between that and the 19th of January, a crowd of strikers surrounded the plant of the American Agricultural Chemical Co.; that they fired stones and broke windows, charged the gate and entered with force, and forcibly took workmen out. They undertook to enter the plant by

night for the purpose of shooting; that during the entire period anterior to the 19th of January there was a state of continuous disorder on the part of the mob, directed against the two plants of the American Agricultural Chemical Co.

14. Because the learned trial judge permitted the defendants to be prejudiced by a line of inquiry on the part of the attorney general in cross-examining the defendants' witness Waring —as to whether the American Agricultural Chemical Co. was not one of the Rockefeller institutions, notwithstanding the fact that he admitted that in a legal sense it made no difference (p. 741).

15. Because the learned trial judge would not permit the witness for the defense, Ralph W. Deacon (pp. 746-7), to testify as to the similarity between the character of the shots he heard on the day in question, and those he heard in the same place the day before.

16. Because the learned trial judge did not permit the defendants' witness Farley to testify that he saw some of the strikers fire at the deputies on the 18th, upon the arrival of the trains due at seven or eight o'clock (p. 810).

17. Because the learned trial judge, notwithstanding the complaint of one of the jurors (pp. 834-5) that he had not heard a portion of the testimony of the defendant Bavier, declined to permit his evidence to be read by the stenographer, notwithstanding the fact that another juror said: "The most of it we did not hear."

18. Because the learned trial judge refused to permit the defendants' counsel to ask the defendant Bavier (p. 836) what Officer Dowling had said to him just after the shooting occurred, or to state his reasons why the question was competent (p. 837).

19. Because the learned trial judge permitted

the State to inquire of the defendants what pay they had been receiving from the detective agency during their incarceration since the shooting.

20. Because the attorney general, after being permitted to ask the defendant Bavier a number of times if he had served as a guard at plants where strikes were in progress, and after he was, upon objection, told that he had gone far enough (p. 861) remarked:

> "This is a pretty dangerous habit this man is cultivating, and that is the reason I ask these questions."

all of which tended to prejudice the jury.

21. Because the learned trial judge permitted the attorney general to ask the defendant McLaughlin (p. 983) whether he had been paid during the time he was in jail, and how much of such time, notwithstanding the fact that when the trial judge asked the attorney general the purpose of this question and suggested, "If he has been paid by somebody since he has been in jail, what effect does that have upon the 19th of January," the attorney general replied:

> "It may not have any effect upon that. It is a very unusual circumstance, that a gentleman should be employed at so many dollars a day, and his services should terminate on the 19th day of January, and from that time on he should not have rendered any service, and yet be paid. It is an unusual circumstance and it has weight in this case. Our proposition is to utilize it. Your Honor, it seems to me, can very well see that that might be very far-reaching in its ultimate effect."

22. Because the learned trial judge permitted the attorney general to prejudice the defendants, and particularly Robert Wallace, by the line of

cross-examination contained on pages 993 to 995 with reference to a strike at Trenton, and the defendant Williams, on pages 1044 to 1046, with reference to his past experience in connection with strikes, in the course of which he was characterized by the attorney general as a strike breaker, all of which was calculated to prejudice the jury against them.

23. Because the learned trial judge permitted the attorney general, during his summing up, to make use of the following language, to the prejudice of the defendants (p. 1204):

> "And if it were not clear beyond all possibility of doubt, that these men are anarchists in their conduct, that they are destroyers of government and order, that if their practice is continued your home will not be safe, any more than mine; if they are let go the State of New Jersey will be endangered, and its fair name smirched forever; if I were not perfectly certain, from the indubitable facts in this case, of the guilt of these men * * *"

24. Because the learned trial judge permitted the attorney general, in summing up, against the objection of defendants' counsel, to avert to the failure of the defendant O'Mara to take the stand on his own behalf, the trial judge making the comment (p. 1203):

> "Well, to take the stand in explanation of the charge that he was one of the members of this party. And to that extent the Court thinks the State was justified in arguing."

25. The defendants were further greatly prejudiced in the trial of this case: (a) by the lack of proof that the deceased was, in fact, Alesandro Tessitore, and (b) by the failure of the State to

produce the shells or bullets that caused the fatal injury, although the same were extracted at the post mortem examination.

26. Because the learned trial judge, in overruling a proposition by defendants' counsel to prove that one of the State's witnesses, Donovan, was greatly prejudiced against the defendants and in sympathy with the strikers, remarked (p. 620):

> "Suppose this is so; does that justify these deputies, as you call them, shooting down men without cause or reason?"

27. Because the learned trial judge would not permit the defendants, through the testimony of Charles R. Dey (p. 910) to show that the State's witness Conlan had failed, although he tried to identify the defendants when he was before the grand jury.

28. Because there was insufficient evidence to hold the defendants liable on the theory that they acted in concert.

29. Inasmuch as the person or persons who did the actual shooting of the deceased were not identified, and might have been among those who were indicted, but not tried, or those who concededly made their escape, harm and injustice was done to the defendants in permitting them, under all the circumstances, to be held responsible for the homicide.

30. Because the learned Judge charged the jury in the following language:

> "I charge you as the law that if you find that the deceased was killed by a body of men, of which these defendants were a part, who went out from that factory gate with a purpose to commit an unlawful act, and with the purpose of standing together and aiding and abetting one another in the carrying out of that act, and this man was

killed by some one of the party when they were all there assisting in the carrying out of this purpose, they are all criminally liable, and it does not make any difference whether the shot was fired by one of these defendants, or some other member of that same party with whom you may find they were joined."

There being no evidence before the Court to justify this charge.

31. Because the learned trial Judge charged the jury in the following manner:

"So, as I have said, if they started out together with a purpose among themselves to do an unlawful act, to stand by and abet one another in carrying it out, and in carrying out that unlawful purpose, some man was killed, all are equally liable."

There being no evidence before the Court to justify this charge.

32. Because the learned trial Judge charged the jury in the following manner:

"It is for you to say from that, and such other evidence as you may recall, whether these men that we have called during this trial deputies did go out together, by a common agreement to do an unlawful act, with the intention of standing by and supporting one another, * * * and if you find that to be so, and that some one of that party fired the shot which killed this man, they are all equally liable, even if it is impossible to identify the men who actually fired the shot."

There being no evidence before the Court to justify this charge.

33. Because the learned trial Judge charged the jury in the following manner:

"If that was an unlawful assembly, the sheriff of the county had a right to go there and have the assembly disperse and to take such necessary steps as the situation required. But before he can shoot into a crowd like that and take life, he must try some other less drastic and more peaceful method."

34. Because the learned trial Judge charged the jury in the following manner:

"Nor has the sheriff any right to swear in what he calls deputies. Under the law of New Jersey the sheriff has a right to appoint an under-sheriff. That man takes an oath, and he gives a bond, and is authorized to act for the sheriff. But there is no statute in this State which permits the sheriff to pick a number of men and swear them in as deputies, and turn them loose to act for him in criminal matters in his absence."

35. Because the learned trial Judge charged the jury in the following manner:

"The burden of proof is on the accused to show facts and circumstances necessary to establish the defense of self-defense. * * * The accused cannot make his own judgment of the necessity of slaying the deceased his justification."

36. During the course of the trial the Court made the following comments prejudicial to the defense:

"The Court: I do not see, Mr. Stricker, how this is all competent you may ask if

these men were there that morning in an unlawful gathering. That does not justify killing them.''

37. Because in other respects manifest harm and injury was done the defendants.

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